JOINT STOCK COMPANIES.

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THE LAW AND PRACTICE OF Joint Stock Companies UNDER THE *CANADIAN ACTS.*

8260

A practical treatise on the Law of Commercial Joint Stock Associations, in the form of a commentary on the Canada Joint Stock Companies' Act, 1877, with which is included most of the other Companies' Acts, both general and local; as also a number of forms relating to the management of such Companies.

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PREFACE.

The restless and everchanging nature of that which we call "law" is, I take it, a sufficient justification now-a-days for the appearance of a treatise on any legal subject; and that without pretending to advance any new theories respecting it. The science of law is essentially a practical one, and, in the use and pursuit of it as a profession, has little to do with speculations which have not directly in view the attainment of some practical end. To the practitioner theories are nought, precedents are everything. A single new point established by authority and placed in such a position that the young practitioner may readily discover and understand it, may be the starting point of a successful career.

And if this be true of law generally, more especially is it true of that portion of it which relates to the affairs of Joint Stock Companies, the rules of which are, for the most part, born of expediency rather than of logic. Moreover while the law applied to corporations and companies is, in a general way, the same everywhere, it varies in many points of detail in different countries, and varies still more in this country from the fact that the authorization of companies and corporations is regulated by different statutory enactments in the different Provinces of the Dominion.

And these enactments though in the main copied from one another also differ in many points of detail and have been the subject of frequent alteration and amendment from time to time.

Again it has always seemed to me, whether rightly or wrongly I cannot say, that some confusion of ideas existed as to the relative positions of companies and corporations, which to many minds were and at the same time were not the same thing. In England for example they are treated of, as a rule, separately, and indeed the Joint Stock Company there differs in so many important particulars from the old common law corporation as to justify the distinction there made. In the United States however, no such distinction exists, the rule there being that any body of persons authorized to sue and be sued, and to act as one for all the purposes of its creation, is a corporation within the full meaning of that term. As stated by Bronson, J. in the *People* v. *Assessors of Watertown*,[1]—"An association under one general head for a village library or to tan hides possesses all the essential attributes of a corporation in as great perfection as the Bank of England or the East India Company." In the Civil Code of the Province of Quebec on the contrary[2] Joint Stock Companies (following the French system) are classed with commercial partnerships; though a recent Act providing for the winding up of Joint Stock Companies,[3] says that the articles of the code respecting corporations (which are treated of in a different part of the work) are modified thereby.

[1] *Vide post* p. 54.
[2] Art. 1889.
[3] 42 Vic. Cap. 31.

In order to reconcile these apparent discrepancies I have in the introductory pages endeavored to trace the origin of the different forms of association from an early period; on the principle stated by an American writer[1] that no law can be thoroughly understood without some knowledge of its earlier forms and systems; and that to comprehend clearly what it is, it is necessary to see how it came to be so. In doing this I found that, under English law at least, the Joint Stock Company of the present day was a sort of bastard offspring of the old civil corporation; or in other words was the essential principle of the civil corporation, taken, like the rib from the side of our first parent, and by a little statutory remodelling—letting-out here and taking-in there—adapted to the wants and requirements of commercial life. But the imputation of bastardy I found must be confined strictly to companies under the English law. That in France the *société par actions* or Joint Stock Company came by a regular and well defined process of development from the simplest form of partnership, to which it could be traced by the most direct and unexceptionable lineage.

In the construction of the work I have aimed chiefly at conciseness, stating both authority and conclusion in the briefest manner compatible with an intelligent understanding of the proposition involved. I have consistently avoided advancing any theories or arguments of my own, though where from given premises a certain conclusion seemed inevitable I have not hesitated to set it down.

As a basis for the text of the work I have, for obvious reasons, selected the Dominion or General Act, and have in

[1] Hadley, Intro. to Roman Law, p. 53.

doing so attempted the rather unusual and difficult feat of dividing it into chapters or heads. In illustration of the different sections I have drawn from all available sources of information, supporting the rules given by reference to such cases as appeared to be of the greatest authority either in this country or in England. Many of these cases are taken from leading English and American writers (who are at the same time credited therewith) while all the most recent, of which there are a great many not hitherto found in any work on the subject, I have taken directly from the reports themselves. In this way I have been able to bring together information on a greater number of questions arising out of the affairs of Joint Stock Companies than are I believe to be found in any other single work.

The vast amount of money annually invested in joint stock enterprise and the vast number of joint stock concerns, which are annually chartered, has given rise to a mass of decisions, respecting the rules by which they are governed unparalelled in the history of jurisprudence. And so important, are these decisions deemed, that in England scarcely a year passes that does not give birth to a new treatise on the subject, or a new edition of an old one. Upwards of a dozen English writers of greater or less note have treated of Joint Stock Companies within the last few years; while, in one case at least,[1] the work has reached a seventh edition. A very useful and elaborate work of which a third edition was issued last year is that of Buckley on the Companies' Acts; while another eminent work, "Thring on Joint Stock Companies," has just reached its fourth. In the United States a work of great merit just published

[1] Cox, Joint Stock Companies.

is that of "Thompson on the Liability of Shareholders," being the first attempt of any note in that country to treat of the affairs of trading associations, apart from those of corporations in general. In Canada no work on this subject has been before attempted, although, as has been pointed out, not only the system, but the rules, differ in many respects from those both of England, the United States, and differ also from each other under the Statutes of the different Provinces.

Besides bringing these various Statutes together and illustrating them in the manner already described, considerable attention has been given to the internal management of companies, the calling and conduct of meetings, the manner of voting, etc.; and a number of forms have been added, so as to make it as far as possible, not only useful to the professional man, but to the directors of companies and the public at large.

C. H. S.

Montreal, April 1, 1881.

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AUTHORITIES CITED.

Abbott's Digest of Corporation Cases.
American Digest.
Angell & Ames' Corporations.
Batchelder, Joint Stock Companies.
Beawes Lex Mercatoria.
Blackstone, Commentaries.
Bouchard, *Loi des douze Tables.*
Bracton, Law of England.
Brice, *Ultra Vires.*
Brown, Joint Stock Companies.
Buckley on the Companies' Acts
Chitty, Commercial Law.
Clark, Partnership and Joint Stock Companies.
Code Civile du Bas Canada.
Code du Commerce.
Code Napoleon.
Code of Louisiana.
Code of Procedure of Quebec.
Collier, Law of Contributories
Coke on Littleton.
Comyn's Digest.
Cornelius Nepos.
Digby, Sale and Transfer of Shares.
Delangle, *Sociétés Commerciales*
Delemarre & Poitvin, *Droit Commercial.*
Field, Corporations
Fisher's Digest.
Fremery, *Droit Commercial*
Gaius, Institutes of.
Gow, Partnership.
Grant, Corporations.
Guizot, *Civilization en Europe.*
Hadley, Introduction to Roman Law
Hallam, History of Middle Ages.
Haydn, Dictionary of Dates.
Healy, Articles of Association.
Jordan, Formation and Management of Companies.
Kent, Commentaries.
Lagrange, Roman Law.
Lindley, Partnership.
Macaulay, History of England
Maine Ancient Law.
McKenzie, Roman Law
Ortolan, Roman Law.
Palmer, Company Precedents.
Pardessus, *Droit Commercial.*
Parkman, Pioneers of France.
Pollock, Partnership.
Pothier, *Sociétés.*
Proffat, Private Corporations.
Quebec Law Digest.
Reeves History of English Law.

Robinson's Digest.
Savary, Parfait Negociant.
Savigny, Roman Law.
Shelford, Joint Stock Companies.
Sirey, Commentaries.
Smith, Wealth of Nations.
Smith, Mercantile Law.
Statutes of Canada.
" Ontario.
" Quebec.
Stephen, Commentaries on Law of England.
Stevens' Digest of New Brunswick Reports.
Story, Partnership.
Thompson, Liability of Stockholders.
Thring, Joint Stock Companies.
Todd, Parliamentary Government.
Todd, Private Bill Practice.
Toullier, *Droit Civil.*
Troplong, *Sociétés.*
Troplong, *Influence du Christianisme.*
Truman, Limited Partnership.
Vincens, *Sociétés Par actions.*
Williams Digest.
Winthrow's Corporation Cases.
Wordsworth, Joint Stock Companies.
Wotherspoon, Insolvent Act, 1875

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INTRODUCTION.

THE principle of association for mutual profit is of very ancient origin. Indeed, if detaching the term *profit* from the narrow idea it conveys when used in a merchant's ledger, we expand it so as to mean, protection, support, or advantage of any kind, we will find the principle coeval with mankind itself.[1] Commencing within that limited circle we call a family, it has spread like a circle on a pool until it has embraced almost all the relations of life, and has given rise to countless associations formed either for pleasure or for profit. Emerging like a mountain stream from the dark recesses of prehistoric or patriarchal times, it has followed its devious course unceasingly, now burying its head amid the unwritten customs of rude unlettered tribes, now reappearing to the light of civilization among more cultured peoples. From theocratic Judea it passed to Phœnecia, to Greece, to Rome, to the more modern nations of the world, always the same in principle, though ever presenting new forms and developing new powers.[2]

We are not surprised then to find its advantages for mutual *gain* merely recognized, also, at a very early period; and so naturally has the principle been developed in this direction that the ancient primitive family has been com-

[1] It was not until some months after this was written that I discovered that M. Delangle's excellent work on "*Sociétés Commerciales*" began in almost the same language. He says: "*Le contrat de société est né, pour ainsi dire, avec l'homme*;" a statement somewhat broader, somewhat more figurative than that in the text, but having the same general meaning.

[2] Bouchaud *Commentaire sur la loi des douze tables.*

pared, not unsuccessfully, with the familiar "Corporation"[1] of the present day. "It is," says Maine, "in the peculiarities of an undeveloped society, we see the first traces of an universal succession. The family, in fact, was a corporation and its head (the *paterfamilias*), was its representative, or we might say its public officer. Let us consider for a moment the effect which would be produced by the death of such a representative. In the eye of the law, in the view of the civil magistrate, the demise of the domestic authority would be a perfectly immaterial event, the rights and obligations which attached to the deceased head of the house would attach without breach of continuity to his successor."

But the comparison ends here. The association of the primitive family was in the main factitious. It did not contain the essential elements of what was known to the Roman law as *societas* and to English law as a partnership. This, in the course of time and guided by the ever-increasing requirements of commercial and industrial life drew away from the primitive association, insomuch that the family became one thing, and the *societas* or partnership another. The former comprised those who, by birth, marriage or adoption, fell under the same *patria potestas*, or were bound together by the same family tie. The latter were those who deliberately associated themselves or put something in common for their mutual profit.

It is with the latter that we are now more particularly concerned.

The latin term, *societas*, is derived from the idea of union —the union of the parties to the contract—the English term *partnership* from the idea of division—the division of the result of that union—whether of profit or of loss. A

[1] Maine refers no doubt to what is known as a civil corporation which would make this sentence somewhat paradoxical in effect, but the analogy between corporations civil and corporations commercial, is so great at the present day as to justify the use here made of the term. The evidence however is that corporations civil preceded by several centuries the simplest form of commercial association.

division of profits only however appears to be essential to the existence of a contract of partnership as the following definitions indicate.

Partnership is referred to in the Roman law as follows:

Societatem coire solemus aut totorum bonorum, quam Graeci specialiter κοινοπραξίαν appellant; aut unius alicujus negociationis, veluti mancipiorum emendorum vendendorum, aut olei, vini, frumenti emendi vendendique.

In French law previous to the code as "*un contrat par-lequel deux ou plusieurs personnes mettent ou s'obligent de mettre en commun quelque chose pour faire en commun un profit honnette, dont ils s'obligent reciproquement de se rendre compte.*"[1]

In the code as "*un contrat par lequel deux ou plusieurs personnes conviennent de mettre quelque chose en commun dans le vue de partager la benefice qui pourra en resulter.*"[2]

In English law, as "a contract between two or more persons for joining together their money, goods, labor, and skill or either or all of them upon an agreement, that the gain or loss shall be divided proportionably between them, and having for its object the advancement and protection of fair and open trade."

In the United States, as "A monetary contract between two or more competent persons to place their money, effects labour or skill, or some or all of them in lawful commerce with the understanding that there shall be a communion of the profits thereof between them."[4]

In the Civil Code of Lower Canada, as "A contract in which it is essential that it should be for the common profit of the partners, each of whom must contribute to it, property, credit, skill or industry."[5]

[1] Pothier, *Société.*
Code Civil Art, 1832.
[3] Watson, followed by Gow.
[4] Story, Part, 6th Ed., p. 4.
[5] Civil Code of Quebec Art, 1830.

In the Civil Code of Louisiana, as a synallagmatic and commutative contract, made between two and more persons for the mutual participation in the profits which may accrue from property, credit, skill or industry furnished in determined proportions by the parties.[1]

But before attempting to describe the commercial association of the present day, it may be of use and interest to glance at its condition in times past, to mark the rudiments from which it sprung; to trace briefly its evolution from the germinal form in which it presented itself during the early Roman period to its present robust development throughout the commercial world. In doing this, we will see that every new form which it has assumed, every new power which it has developed, has been, not the result of legal speculation, but of a yielding to the necessity of adapting its borders to the ever expanding and increasing demands of commercial life. At no time has the prevision of the Legislature or the abstract reasoning of the jurist gone beyond the actual requirements of the present. Each new capability which the law of association has presented has been well understood and utilized long before it was attempted to be defined by principles or bounded by rules.

Bearing this in view, we are not surprised to find that the references to a commercial association or *societas* made by the Roman jurists even up to the time of Gaius, attempt no definition of its principles. The references amount to nothing more than a simple statement of what actually existed. Gaius says: We are accustomed to enter into partnership (*societatem coire solemus*) either of all our goods (*aut totorum bonorum*), called by the Greeks κοινοπραξίαν (*Koinopraxion*) or for some single enterprise, (*aut unius alicujus negotiationis*) as, for instance, the buying and selling of slaves or of corn, wine, oil, etc., (*veluti mancipiorum emendorum vendendorum, aut olei, vini, frumenti emendi vendendique.*

But, though nothing is here defined as essential to the contract of partnership, it cannot be doubted that in the application of the law certain principles were recognized.

[1] Civil Code of Louisiana Art, 2772.

The fault was probably not so much in the law itself as in the crudity of the law literature of the day, which had scarcely begun to aim at scientific method or scientific accuracy. In the discussions which arose from the application of the law we see the dawn of principles which, like some constellation, the existence of which was but faintly guessed at centuries ago, has long since become fixed and familiar to everybody. Thus, in the dispute concerning an unequal division of the profits, we see a tacit recognition of the principle that a division of profits was an essential element in the contract. A contract by which one of the partners took all the gains and the other or others got none, was called leonine, from the lion in the fable, who, by a process of reasoning, peculiar to arbitrary power everywhere, took all the spoil for himself, and gave his companions none. It is evident, therefore, that the leading principal of a *societas* was not so clearly understood as to lead to the entire rejection of such a contract from the *res naturae*, but simply to refuse to give effect to it by any process of law. From this glimpse of the essential principle arose the dispute as to what should be done in case the parties had not agreed in advance as to their respective shares of the profits, or had agreed upon unequal shares. The latter question particularly seems to have involved the early legal mind in a good deal of perplexity. Between the *societas leonina*, which they found themselves unable to reconcile with their notions of the contract, and the *societas* of unequal shares, they were apparently unable to see any essential difference in principle. But the age in which these difficulties arose was the age of the greatest legal activity, of the greatest legal progress, of the most rapid development of legal propositions. It was, indeed, the summer-age of jurisprudence in which its principles are seen daily unfolding to the light like the blossoms of some fruitful tree and giving promise of the rich harvest it was destined to yield.

The vigorous intellectual attrition which these disputes occasioned very soon rubbed from the eyes of the early jurists the scales which covered them and enabled them to see

with unobstructed vision and to establish upon an immutable basis principles which remain unshaken to this day.

These difficulties once removed, the idea of association for purposes of gain expanded very rapidly, insomuch that while Gaius enumerated only the two descriptions of partnership mentioned above, Ulpian, who followed very shortly after him, mentions no less than five, viz.:

1st. *Societas totorum bonorum*, or of all the property of the partners.

2nd. *Societas que ex questa venerent*, or of the profits merely of the partnership.

3rd. *Societas negotiationis alicujus*, or for some special enterprise.

4th. *Societas rectigalis*, or partnership formed for the purpose of farming the public revenues.

5th. *Societas rei unius*, or partnership in which a single object is placed in common, as a house or a horse.

Further on we will have an opportunity of contrasting these forms of partnership, these applications of the principle of association, with those known both to mediæval and modern times. For the present it will not be without interest to see to what extent these forms of association entered into the actual every day life of the Roman people.

It is certain that the Romans were in the habit of forming associations for the purpose of carrying on *all kinds of commercial operations both by land and sea*. Then, as now, there were associations formed for all kinds of enterprises from the two professors mentioned by Paul, who entered in a partnership to teach grammar, to the company spoken of by Livy, which was formed to raise the means necessary to enable the two Scipios to carry on the Carthaginian war. Then, as now also, there were banking companies which derived considerable profit *from exchange, from lending at interest, from deposits*, from arranging set-

tlements between debtor and creditor, etc. These companies were subject to an unlimited responsibility, had large capitals and a corresponding credit.[1] There were also associations to lease mines from the government and work them, and a very common form of association was that called by Ulpian *societas vectigalis*, organized for the purpose of farming the public revenues. These latter fill no inconsiderable a place both in Roman literature and Roman law. They comprised companies for the collection of tolls, customs-dues and special rates or tithes levied on the different provinces of Rome. The lease of these dues was made at Rome by the public minister for a price to be paid by the company, and which represented the actual revenue derived from them. These farmers of the public revenues were called publicans (*publicani*), and belonged for the most part to the patrician or upper classes, having, in many cases, indeed, previously filled the highest offices of State. Among them also were to be found capitalists of almost unlimited means, men who, like Rabirius of that time, or like Rothschild of the present, lent large sums to the kings and governments of other countries. Cicero mentions a number of the companies which were of great notoriety in his day on account of the vast means they possessed and the vast powers they enjoyed.

These powers, however, were susceptible of great abuse and very naturally caused the holders of them to be held in the most unenviable regard by those on whom they were exercised. But though any system by which the public revenues are sold or let to others for gain, whether to companies or individuals, would now be regarded as utterly vicious in principle, the existence and organization of these particular associations form one of the more interesting facts in the history of commercial associations. In their formation, some of the partners or associates were *mancipes*, those were the persons who actually took the lease from the government, and were responsible to the government for the obligations imposed by it; others, called

[1] Troplong Soc. p. XVII.

praedes, were sureties merely for the first; others contributed a certain amount to the funds of the association, and received a proportional share of the profits, but had nothing to do with the administration or management of its affairs.

The interest of each associate was in proportion to what he contributed. The management was by one or more directors called *magistri*. These *magistri*, whose headquarters were always at Rome, administered all the affairs of the company, entered into and discharged obligations, conducted all the correspondence with the provinces and were the depositaries of the books and accounts. When matters of more than ordinary importance arose general meetings of the associates were called in order to decide upon what course to pursue.

These associations had their ramifications all over the country, and employed a large number of persons, some of whom had shares in the company and some not. Finally, it was decided in order to render their existence more stable and continuous that they were not dissolved by the death of a partner but continued just as before.

In an association of this kind we see something more than the germ of the Joint Stock Company of the present day. We have the association for the carrying out of an immense enterprise with an enormous capital and with a nominally unlimited number of associates. We have the administration by managers and sub-managers, and the periodical meetings of those interested for the purpose of taking into consideration the affairs of the company, and we have the continuous succession.

This development, this practical application of the principle of association belongs to what is known as the second period in the history of Roman jurisprudence, viz: from 100 B.C. to 250 A.D., belongs indeed to the former part of that period. Under the Emperors no change in the law of *societas* is observed, no new form of commercial association is presented, no further development of its principles can be traced. The monopolies already referred to for the

collection of tithes imposed by the government began to be restricted in their powers. The tithes themselves were changed to a fixed sum, payable directly to the government, and the collection of which was entrusted to magistrates appointed by the Emperor himself.[1] This was during the time of the early Emperors. Under the later Emperors up to the time of Justinian and the fall of the Empire, which comprises the third of the periods referred to by Roman law writers, the principles of Roman law generally undergo very little change. A few useful modifications were introduced by Justinian himself, while others, relating chiefly to the amelioration of personal status, resulted from the adoption of the Christian religion.[2] But in the main the period was one of codification rather than of development, of contraction rather than expansion. The statement of the law concerning *societas* in the Digest occupies a very short chapter indeed. It adds nothing to what was laid down by Gaius over three hundred years before, and in fact it would not, perhaps, be too much to believe, when we remember the violent political changes through which the Empire had passed in that interval, the assaults which she had had to encounter, and the general demoralization which had long been sapping the energy of her people, it perhaps would not be too much to believe that the principles of the law of commercial associations were less generally and less thoroughly understood and appreciated than they were three centuries before.

The history of commercial associations and the principles which underlie them, during the five centuries which followed the death of Justinian and the final collapse of the Empire, is the history of civilization itself during that period—a history obscure in detail and unfruitful in interest.

Irregular and semi-barbarous compilations had supplanted the stately works of Justinian, while the carefully

[1] Troplong, Soc. p. XXXIV.
[2] Troplong—*Influence du Christianisme.*

elaborated doctrines of the Digest and the Institutes maintained a scattered and vagrant existence throughout the towns and cities of Italy.[1] Commerce was dead, and learning, such as it was, was guarded in close confinement in the abbeys and monasteries of Europe. The world for five centuries may be best described as lying in chrysalis. The elements out of which modern civilization was to spring were undergoing a process of fusion which admitted neither of progress nor development. These elements were of a very diverse kind. They were diverse in race, in religion, in manners. There were the fragmentary relics of the Roman Empire—the savage tribes of the North, the semi-civilized peoples of the West, all mingling and blending into one—the modern European.

There was the municipal system of Rome, the ecclesiastical system of Christianity, the barbaric system of the Goths and Huns all mingling in that grand *melange*. There was the desire, the feeling of independence side by side with the most abject submission, the military patronage of feudal life rubbing shoulders with ecclesiastical domination, the spiritual power with the temporal power, the legislation of civilized Rome with the unwritten customs of the Barbarians.[2]

In the twelfth century commerce in common with the other distinguishing features of civilization began to revive.

For six centuries it had lain dormant; its most active and indeed its only representative being the City of Amalfi which had maintained a commercial intercourse between the Christians and the Saracens from the sixth century until the first crusade in 1095, and forms as it were the connecting link between the old civilization and the new.[3]

The revival of commerce in the thirteenth and fourteenth centuries was very rapid, though strange to say the

[1] Savigny—*Histoire de droit Romain en moyen age.*
[2] Guizot—*Civilization en Europe.*
[3] Hallam's History of the Middle Ages.

principal object of commerce at this time appear to have been what is usually regarded as the medium simply of commercial transactions—money itself. Money was very scarce and interest very high. Early in the thirteenth century the trade in money which had been for some time very great, passed from the Jews—who were everywhere persecuted—to the Lombards, and so rapidly did it increase in their hands that Letters of Credit and Bills of Exchange were introduced in order to afford increased facilities for its operation. By 1400 the latter were drawn in sets and worded as at the present day.[1]

The revival of commerce led very naturally to the revival of commercial associations. Banks and banking companies were formed at a very early period, though in what manner or subject to what rules does not very clearly appear. The Bank of Venice is spoken of as early as 1171. The Bank of Barcelona, which is said to have been the earliest bank of deposit, instituted for the accommodation of private merchants, in 1401.[2]

At a very early period also, commercial transactions commenced to be conducted, and commercial associations formed as at present under a firm name. Muratori gives the name of a firm with whom in 1233 the Pope Gregory IX arranged his revenue accounts. This firm—Angelerio Solaficu & Co.,—(*Angelerium Solaficu et ejus socios*), had arranged with the Pope for the recovery of arrears of tribute due the Church by France, England, and other countries. The term "Company," which is of such common use in the present day all over the civilized world is of feudal origin, and its growth is very graphically described by Troplong. He says:—"From the first moment that history throws any light on feudal civilization, under which the inferior classes lived in the service of the soil, are to be seen families organized into tacit hereditary associations. The association was of a l the

[1] Hallam's History of the Middle Ages.
[2] *Ibid.*

members of the family gathered under the same roof on the same domain for the purpose of placing in one common fund the results of their labours. It was by this means only, by the union of their arms and their means that they contrived to maintain an existence at all independent. Every one, old and young, men and women, married and single, remained from father to son in this patriarchial association, and had part in the bread and salt and the common fund. Some for the services they had already rendered, some for the services they would some day render, some for the services they were actually rendering to the community. The bread (*pain*) was the emblem of this rustic society, and hence the term *company*, that is to say, eating their bread together."[1] This term Company is often applied to such a community in the text of the *coutumes*. Such a Company had a fictitious personality, or corporate and perpetual existence like the corporation of the present day. It was not dissolved by time or the death of any of its members. It continued from generation to generation under the protection of the *Seigneur* of the soil. They had like the *publicani*, an elected Chief—the *chief of the bread*. All the members of the *Company* were bound by his acts of administration, by all contracts made by him of sale or purchase, of loan or lease. It was a sort of limited monarchy, for the chief never failed to call in the advice of his associates when anything of importance was to be transacted. All contracts were made under a firm name as *So and So, and ses compagnons or personniers*.

The partnership was an universal-partnership. Each brought to it all his earnings or industry, and the whole formed the common property of the Association.

The company so formed, though having little in common with the ordinary commercial association, commenced at a very early period to give its name to the latter in almost all its forms. According to some of the writers the addition,

[1] Con. or com. *together*, and *pain* bread.

& Co., in a firm title indicated that the partners only whose names were mentioned in the title were liable for all the debts of the partnership, that those whose names were concealed behind the form, *& Co.*, were liable only in proportion to what they had contributed to the partnership capital,—in other words, that such a firm title signified a partnership *en commandite* or limited partnership; while others maintained the contrary. Questions like these arose, it will be readily understood, almost simultaneously with the appearance of such associations themselves and were discussed a with great deal of scientific acumen and legal ability by writers of a very early date. Bartole, who wrote in the fourteenth century, says that it was the custom throughout Italy for one of the partners to be described in the commercial books and on merchant's bills by his proper name and the others by a common appellation as "*Titius & Co.*," and expresses the opinion that such a style indicated no more than that Titius was the head of the partnership and the others were entitled to their share in the partnership property, and were held *solidairement* for all its obligations. This interesting question as to the effect of the addition, *& Co.*, as will be seen farther on was still the subject of controversy at a very recent period, and is construed differently in different countries at the present day.

The necessities of commercial life, and the multiplication of commercial associations soon gave rise to the necessity of classification. Some were found to be based on something which differed in principle from others; some were found to require a more liberal, a more elastic interpretation of the law applicable to them than others.

The first classification which presented itself was identical with that observed by Gaius, viz: universal and particular—of all the property of the associates or only of certain specified property, or for a certain specified object. The latter comprehend all ordinary partnerships of the present day.

The next classification was a sub-division of the particu-

lar partnerships into civil and commercial. The first comprised all those to which the rules of the civil law of the country in which they existed could be strictly applied. The second, those whose relations with foreign countries and the world generally, rendered it indispensable to treat in a more liberal manner, to subject to broader rules, and to regard as exempt from a rigorous interpretation of the civil law, much in the same way as the Roman *prætor* found means of granting relief to those on whom a strict interpretation of the civil law would operate unjustly. Indeed the distinction between civil and commercial has been traced by careful writers to the wisdom of the Romans. "Commerce" says one, "cannot be civilized, cannot be naturalized. It belongs to all nations—its tendency is to embrace the whole world in its operations and to make of merchants everywhere a single association. To the members of this vast association, differing in religion, in government, in manner and laws, separated by oceans, and by deserts, what other rule of law or of authority can be imposed than that of natural justice? What other rules can be used to govern transactions which embrace the entire globe, than those of good faith and equity, or in other words of natural right. The Romans even after the fall of the Empire were struck by the fact and were careful to exclude from their positive legislation transactions of a commercial nature which they regarded as belonging to the *jus gentium* or law common to all nations."[1] The same authority regards as somewhat remarkable the fact that all commercial nations seemed to be agreed as to the principal rules governing commercial transactions, and ascribes the circumstance to their intimate relations with each other, a cause which, combined with the necessity of mutual protection, produced also the Hanseatic League or commercial confederation, which in early times—that is to say, from about the commencement of the thirteenth century until the sixteenth—embraced all the principal cities of Europe, established

[1] Delemarre and Poitvin, *Droit Commercial*.

themselves the rules by which they were to be governed, and dictated terms to monarchs.[1]

In this the origin of the distinction between affairs strictly civil and affairs commercial we can trace the principles by which the question, what is a commercial transaction? What is a commercial partnership? is determined at the present day.

"Commerce, *in its broad sense*, is the reciprocal exchange "of moveable things necessary to the existence, use or comfort of man."[2]

A commercial partnership was one entered into for the purpose of buying and selling, fetching and carrying these *objets de commerce*, these "moveable things necessary to the existence, use and comfort of man," and from one country to another sharing the profits derived therefrom. The principal of these moveable things during the early period were silk and woollen stuffs. In fact, the introduction of silk manufacture into Palermo in 1148 gave the earliest impulse to Italian industry. From this time an active trade begins to be noticeable in Tuscany, Lombardy, and other Italian states, in the cultivation of mulberries and the manufacture and sale of silks, and in Flanders and the south of France in the manufacture and sale of woolens. So profitable did this traffic in a short time become that large

[1] Hallam, Middle Age.

[2] Delemarre and Poitvin, *Droit Com.* The expression "in its broad sense" must have been used by the learned authors unadvisedly as the definition given would certainly seem to be the definition of commerce in its narrow and restricted sense rather than in a broad one. The broad one would seem to comprise the carrying on of any business or enterprise having gain simply for its object. Even the leading idea in the above definition that commerce is the reciprocal exchange of *moveables* does not seem to be held an essential principle in commerce by some of the foremost writers. "For several years past," says Troplong, "vast partnerships have been entered into for the purpose of buying and selling real estate, *(les biens fonds)* by which large profits have been made, notwithstanding several heavy reverses. These partnerships nevertheless are not regarded as commercial, they being opposed to Art, 632 of the Code de Commerce. The purchase of immoveables to sell again with a view to gain is not characterized by that Code as a commercial act. Assuredly this is an oversight *(une lacune)*. It is hard to see why they should not be regarded as merchants who treat real property as a merchandise. Troplong, soc., sec. 319.

companies[1] were formed to carry it on, and many merchants became so rich as to rival in wealth the most ancient and the most powerful of the nobility. Two Florentian companies in particular, attained to great power and wealth during the first half of the fourteenth century. These were the Bandi and the Peruzzi, the members of which were by turns merchants and statesmen, and were conspicuous in politics and war as well as in finances. They were creditors of Edward III, to whom they loaned vast amounts of money to carry on his wars. When war was declared between France and England he owed them, according to one authority, 900,000 gold florins,[2] and, according to another, 1,365,000 gold florins,[3] his inability to repay which involved not only them but nearly the entire commerce of Southern Italy, in ruin. In front of them were innumerable branch houses which they had established in almost every capital of Europe, behind them the smaller trading houses, and capitalists of Italy, who, dazzled by the enormous profits which it promised, had, like the victims of the South Sea Bubble, emptied their means into this vast concern.

Of the form and description of these early trading associations nothing can be stated with absolute certainty, though there is very little doubt they belonged to the class known in French law as Commandite, and in Italian, as *accomenda* or *accommandita*, from the Latin *commendare*, to deposit or entrust. The origin of this species of contract has, like the birth-place of Homer and the invention of printing, been claimed by different cities, and been the subject of much fruitless dispute. By some it is ascribed to Genoa, Florence, Pisa, and other Italian towns; by others to the province of Languedoc and Provence in France; by some, again, its origin is ascribed to a system which ob-

[1] By the terms *companies* here used must not be understood the joint stock company of the present day, but rather voluntary associations of the organization of which very little is known with certainty, but were supposed to have been for the most part partnerships *en commandite* or limited partnerships.

[2] Hallam.

[3] Villain.

tained at a very early period in the agricultural parts of France, by which, under the name of *commande de bestiaux* or *bail à cheptel*, a herd of cattle or flock of sheep was given in trust to another to farm and care for at his own expense, the profits to be divided between them. By others to the necessity on the part of those possessed of capital, but who did not wish to incur the risk of commercial adventure on their own behalf, of evading the laws against usurers, which were very severe, and of the desire of men of rank to embark their capital in trade without losing caste. Certain it is that the Statutes of Florence and Pisa make mention of it as early as 1160, while it is found in the Statutes of Marseilles within a century later. But whatever its origin, certain it is also that even at a period earlier than these dates it was the custom of Italians and those bordering on the Mediterranean, to confide their capital either in money or merchandise, but more frequently in the latter, to mariners and maritime traders to dispose off at the best possible advantage, in the ports of Europe, and make return of the result. To wheresoever the honor of its birthplace belongs there is abundant evidence that during these mediæval centuries it was one of the most popular forms of trading association, both by land and sea, and gave an immense impetus to the development of trade throughout the world. The great advantage offered by this species of commercial association was its power of utilizing capital without involving the bailor or *commanditaire* in any way, without subjecting him to anything beyond the loss of the amount he had risked. In this way a vast stream of capital, otherwise pent up by the restrictions and probibitions of the church and of society, was set at liberty to turn the wheels of commerce which were just then being set in motion throughout Europe. Thousands who, in consequence of these prohibitions and restrictions, were unable to traffic in their own name, could do so in the name of others, without themselves being in any way compromised. The advantages thus offered were seized with avidity by the Lombards and other Italian merchants, who pushed their adven-

tures from France and England on the West, to Cyprus on the East, and realized such enormous returns from their enterprise that they became, as it were, the bankers of the world, and lived in palaces of oriental magnificence.

But the advantages of the *commandite* system could be pushed still further. What it did for the individual it could do also for the association, or, as the European writers call them, the companies themselves. If an enterprise offered which was too great for one association to undertake alone, or which on other grounds none of them wished to undertake, a number of them could form a common fund, a joint capital, and putting forward one of them or some of other party as manager of the enterprise, form an an arrangement by which the receipts would be *pooled* (to use the modern term), for the benefit of the whole. But great as were the operations of the Italians and others throughout Europe and the East, they were still greatly increased by the discovery of the New World, which opened an almost unlimited field to commercial enterprise and commercial speculation, and gave rise to still other and more expansive forms of commercial association.

One of these was the *société anonyme*, or anonymous partnership. The *société anonyme*, though possessing much in common with the *société en commandite* differed from it in this important particular—it had no personal representative. From the idea of a partnership having a number of partners who were not personally bound it was a very easy transition to that of a partnership, in which none of the partners were liable beyond the amount which they had contributed. Its personality consisted only in the partnership fund. Its name was the name of the object for which it was formed. The names of none of its members were made public. But at the same time they were not voluntary associations as ordinary partnerships, but were formed under and by *special authority*. For each anonymous partnership which public authority considered it expedient to license *a special act* had to be passed. The agreement of partnership also containing

the names of the members, was from an early period obliged to be registered. This form of association had no recognized existence, however, prior to the ordinance of 1673, which first describes them and designates them by the name of *sociétés anonymes*.

We arrive now at a very important era in the history of commercial associations, a very important period in the evolution of joint stock companies, a development which gave to anonymous partnerships an immense superiority in their adaptation to the largest enterprises, viz., the division of the joint funds into *actions* or shares.

Opinion is much divided concerning the origin of this system. Some writers ascribe it to Law, who instituted the celebrated Bank of France; some date it from the end of the sixteenth century, and cite the no less celebrated East Indian Co., as the first instance of the kind, while Troplong, who had apparently gone into the question much more thoroughly, ascribes to it a still greater antiquity than either. He professes to find traces of the system as far back as the twelfth century in a certain flour mill, which still existed at Toulouse, and the total revenue (*usine*) of which was divided into parts called *uchaux* or *saches*, which were distributed among the joint owners according to their interest, and from which these joint owners were called *pairiers* or *pariers*, a term synonomous with participant. This, however, would appear to be a different thing from a joint capital stock or fund divided into shares, having arisen apparently from the absence or scarcity of a convenient circulating medium, by which to evidence the share of each in the product of the mill. Another instance cited is that of a joint fund formed for the purpose of farming the revenue of the Papal States in 1555, which was divided into shares, and not only the sale of a number of which shares but the names of the parties by whom they were sold are recorded. This would seem to be a much more analagous and probable circumstance than the other when it is considered that the East India Co., already referred to, whose capital was undoubtedly divided into shares, was formed in 1602, only a

few years later, and that the Italians uniformly took the lead in commercial inventions and commercial advancement at that time.

But whatever traces—whatever germs of the system may be discovered in the early history of commercial associations, certain it is that the discovery of the new world and the subjugation of the old lent an immense impetus to its development. Countless associations sprang into existence; some for the cultivation of the East Indies, and some for the exploration of the West.

The reputed wealth and wonders of the latter especially attracted thousands to its shores. "Every ship from the new world came freighted with marvels which put the fictions of chivalry to shame."[1] Its inexhaustible stores of gold and minerals, the fertility of its soil, the wealth of its waters, its fabled fountains of perpetual youth, all lent an ardour to commercial enterprise, and an eagerness to commercial adventure, unknown even to that romantic and adventurous age. The means to carry on these enterprises was furnished sometimes by individuals, and sometimes by the association of capital.

Though Francis I. encouraged his subjects to emigrate and to explore, neither his government nor his successors took any active part in the organization of these enterprises or granted them any material aid. In 1626 Louis XIII licensed a company called *La Compagnie St. Christophe*, which entered exclusively into the colonization and cultivation of the islands of the Antilles,—Martinique, Guadaloupe, St. Dominique, etc., but having exhausted its capital they were obliged to sell, and the company was dissolved. In 1628, another company was organized to carry out the same object in La Nouvelle France, and others for other parts of the New World. In 1664, the property rights and privileges of all the companies were merged in the West India Company, of the associated capital of

[1] Parkman, "Pioneers of France in the New World."

which the King furnished the tenth part and conceded to it, in fee simple, the Antilles, Canada, Nova Scotia, New Foundland, Cayenne, in short all the country from the Amazon to the Oronoco, with the sole right of carrying on trade between these parts and France. But though endowed with everything which seemed calculated to secure success it lasted but ten years. At the end of that time the King finding it was not self-sustaining, recalled its privileges and the lands he had conceded to it at the same time.[1]

The East India Company formed for the same object was more successful. Among the associates or shareholders were the King himself, and Colbert, his Minister. Its capital amounted to several millions and was divided into *shares* of one thousand and fifteen hundred pounds each. Of the total capital the King contributed six millions, the Queen, Princes, etc., two millions, the Superior Courts twelve hundred thousand, the capitalists two millions, and the merchants six hundred and fifty thousand. It was open to all French persons, high or low, rich or poor, who wished to take part in it. The capital was to be paid in three instalments—the first cash, the others in two consecutive years. The penalty for failure to pay "calls" was the forfeiture of that already paid, which accrued to the Company. The only means of withdrawing from the Company was by the *sale of shares*. Neither the Directors nor the shareholders were held under any pretext whatsoever beyond the amount they had subscribed. The Directors could be molested neither in their persons nor in their property on account of the affairs of the Company. The number of directors was twenty-one, and they were chosen from among those of the shareholders possessing a certain number of shares. The effects of the Company could not be seized by the creditors of the individual shareholders.

These, the leading features of the East and West India Companies of France in the first half of sixteen hundred were the leading features also of the ordonnance of 1673,

[1] Troplong, copied from Voltaire.

and are the leading features of the "Joint Stock Company" (limited), of to-day, to which two centuries have failed to introduce any material alteration or improvement."

Let us turn now to the history of commercial association in English law. In England, Joint Stock Companies, or as they are more frequently called there "Trading Companies" or trading corporations, appear to have had a somewhat different origin. The history of commercial associations there is by no means so easily traced. Indeed, in glancing at the English law books, the most striking fact we will meet with, is the very small space they occupy there. Bracton, who wrote in the thirteenth century, and who is the earliest English law writer, whose works have come down to us in anything like a complete shape, and who, like the early French writers, was more a commentator on the Roman law than a writer of English customs or jurisprudence in referring to the four great consensual contracts of the Roman jurists, viz: sale, lease, partnership and mandate, very strikingly omits all explanation of the latter two, a fact which seems to point not only to the utter absence of rules on these two important subjects, but to the utter absence of anything like necessity for such rules at that period of English history. Indeed, it is not until a comparatively recent period that partnership commences to claim a place as a distinct branch of English law, and to be governed by principles of its own.

The celebrated work of Littleton, who wrote in the 15th century, and the still more celebrated work of Coke, who wrote in the 16th refers in the most casual manner to commercial law.

Although as we have seen above commerce began ar its head in England as early as 1300, the rules by which commercial relations were governed did not attract the attention of law writers until centuries afterwards. Blackstone, who died just a century ago, dismisses all commercial law with the following brief reference: "The laws of England regard the king as the arbiter of domestic commerce.

To enter into the nature of *foreign* trade, its privileges, rules and restrictions were too wide a field and alien to the purpose of this treatise *which is confined to the law of England*, whereas no municipal law is sufficient to order and determine the complicated affairs of foreign commerce, or has proper authority for this purpose. For, as these are transactions carried on between the subjects of independent states, the municipal laws of one will be shewn no regard to by the other. Therefore, the affairs of merchants are regulated by a law of their own called *lex mercatoria*, in which all nations agree. It is held in particular to be a part of the law of England, and that often even in matters relating to domestic trade, as for instance the drawing, acceptance and transfer of inland bills of exchange." Besides this, in speaking of the jurisdiction of the equity courts, he says, quite incidentally, "they take a concurrent cognizance of * * * all dealings in partnership, or between principals and agents, as well as of many other mercantile transactions."

But it would be strange if writing at a period subsequent to the establishment and organization of the East India Company, to the excitement attendant on the collapse of the South Sea Company, as well as of a host of similar, but smaller enterprises which sprang into existence about the same time, there should be no reference to this species of commercial association. We find therefore a reference, a very casual one certainly, but still a reference to trading companies, in the chapter on corporations or "artificial persons." In speaking of the powers of corporations, he says, quite incidentally: "But no trading company with us can make by-laws which affect the king's prerogative or the common profit of the people, under penalty of forty pounds, unless approved by the Chancellor, Treasurer and Chief Justice, or Justices of Assize in their circuit; and even if so approved they are void, if contrary to the laws of the land;" and marvellous to relate, quotes as authority for this statement a statute passed over two centuries previous, viz: that of

19 Hen. VII.[1] From the fact then that so little is said of partnerships in general, and that trading companies are alluded to only as a kind of civil corporation, we are brought to the conclusion that while in Italy and France, Joint Stock Companies were evolved by a regular and plainly marked process of development from the principle of partnership or commercial association in general, in England they were regarded merely as a form of corporation adapted to "trading" purposes.

As such, therefore, it will not be without interest to digress for a moment in order to glance at the historyof corporations generally.

Blackstone, following the account given by Plutarch, says: "The honor of inventing these political constitutions[2] belongs to the Romans. Numa, at his accession, finding the city torn to pieces by the factions of the Sabines and Romans, sub-divided these two into many smaller ones by instituting separate societies of every manual trade and profession. They were afterwards much considered by the civil law, which styled them *universitates* or *collegia*, whence they were adopted by the canon law (for the maintenance of ecclesiastical discipline), and *subsequently by that of England*. Our laws, according to the usual genius of the English nation have improved on the Roman invention, particularly with regard to sole corporations, of which the Roman lawyers had no notion, their maxim being *tres faciumt collegium*, etc."

[1] This reference, however, is clearly to what are known as guilds (an institution of much greater prominence in the earlier periods than at present), and not to trading companies such as are contemplated by the Joint Stock Companies Acts. These guilds existed apparently from a very early period, and were purely civil corporations for the protection of the particular trade or industry to which they belonged. They must not therefore be confounded with the Joint Stock Company of the present day.

[2] *i. e.* Constitutions granted from motives of policy, compare the expression "body *politic* and corporate." As quaintly put by Coke in the section on Bodies Politike, "That is a body and takes in succession, framed (as to that capacity) by policy, and thereupon it is called here by Littleton "a body politike;" and it is also called a corporation or body incorporate, because the persons are made into a body and are of capacity to take and grant, and that body politic and incorporate may commence and be established three manners of way, viz: by prescription, by letters patent or by Act of Parliament," etc. Coke, sec. 413.

Kent, on the other hand, in his sketch of the history of corporations, ignores the relation of Plutarch, and following the Digest, which, perhaps, is the more reliable authority, says: "Corporations were copied from the laws of Solon, which permitted private companies to institute themselves at pleasure, provided they did nothing contrary to public law." At a later period, however, it appears the Romans became very jealous of these institutions, and restrained those not specially authorized. Every corporation was ilicit that was not ordained by decree of the Senate or of the Emperor. And, in the time of Augustus, according to another historian, they were suppressed, for the very reason for which Plutarch alleges they were invented, viz.: for the suppression of faction and the preservation of the order and peace of the city.

Whichever of the two narratives be the correct one, certain it is, that bodies corporate existed in Rome at a very early period, being dignified with a place in the Twelve Tables, which allowed them the right to make by-laws, and private statutes, for their better government.

At a later period, as we have already seen, companies on a very large scale and for divers purposes existed under the authority of the State. That they did not possess all the characteristics and powers of the corporation of the present day, however is clear from this, that a corporation could not for a long time take property by inheritance or even by legacy. The personality attributed to it at a later period was not yet recognized; but after the introduction of Christianity, important modifications were made in the law. The manumitted slave of a municipal body, a city corporation; might be appointed heir, and thus, a right of succession acquired for the municipality itself. Churches, monasteries and pious foundations of every kind also received the right of inheritance. Other corporations, could have it by special concession of the government.[1]

[1] Hadley, Introduction to Roman Law.

It is to these "churches, monasteries and other pious foundations" that England is indebted for the principles of incorporation. It was through them and the Canon Law by which they were governed, that corporate bodies were introduced into Great Britain. The first Corporations of note there, were churches and colleges; but in the course of time and the progress of commercial development "trading companies" for the purposes of their enterprise demanded incorporation, and charters of incorporation appear to have been granted them on the same principle and subject to much the same rules and conditions as to corporations of a non-commercial character. Hence they are referred to by Blackstone as a kind or instance of civil corporations, as contradistinguished from *eleemosynary* which is the other great sub-divivision of *lay* corporations. This will be more clearly understood by citing his own words. He says: "Lay corporations are of two kinds, *civil* and *eleemosynary*. The civil are erected for a variety of temporal purposes. The King, for instance, to prevent an interregnum; trading corporations *for the regulation of trade and commerce*, and others for the better carrying on of divers special matters, as church-wardens, for the conservation of the goods of parishes; the College of Physicians in London, and the Royal Society for the advancement of medical and natural science, etc. The universities of Oxford and Cambridge are civil corporations."

The difference between English and French law is this, that while in the latter a well recognized distinction is drawn between civil and commercial affairs, and conspicuously between civil and commercial associations and corporations, the counterpart of civil corporations in English law is eleemosynary.[1] The only evidence of a law regulating the commercial affairs and relations of life as distinct from the

[1] The use of the term "Civil," as a legal term has grown to be very vague and unsatisfactory. Used with reference to law generally it is supposed to refer to the *corpus juris* or Roman Law. In other relations it is used in contra-distinction to commercial law, to criminal law, to ecclesiastical law, and as we see by the text in reference to corporations as contradistinguished from eleemosynary

common law of the country, is that mentioned by Blackstone, and quoted above, in which he speaks of foreign trade and the *lex mercatoria*.

No distinction, as in the French law, is made between commercial associations of a corporate character and corporations generally. This is the more astonishing when we consider the importance to which the commercial relations of Great Britain had attained, long prior to the time at which Blackstone wrote. When we consider the countless associations which had been established either by royal or parliamentary authority, for the purpose of conducting that commerce, and the fact that the French ordinance of 1673 had established an important distinction between civil and commercial affairs, and civil and commercial associations upwards of half a century before.

Adam Smith, who wrote about the same time as Blackstone, leaves no doubt as to the extent and importance of these commercial relations. According to him, there were two kinds of "trading companies." There were, first, what were known as "regulated companies."

These were companies which did not trade upon a joint stock capital, but were obliged to admit any person properly qualified, upon payment of a certain "fine," and upon their agreeing to submit to the regulations of the company. Each member traded upon his own stock and at his own risk. When they traded upon a joint stock, each member sharing in the common profit or loss, in proportion to his share in the stock, they were called JOINT STOCK COMPANIES.[1]

The old English East India Company, which was established Dec. 31, 1600, by charter from Queen Elizabeth, was first a regulated company, but in 1802 was changed into a *Joint Stock Company*,[2] constituting them a body corporate by the style of "The Governor and Company of the Mer-

[1] Smith—Wealth of Nations, p. 307.
[2] *Ibid*, 313.

chants of London trading to the East Indies." They had a common seal, and were to be managed by a governor and twenty directors, to be changed yearly on the first of July, or within six days after. Following the East India Company, many important monopolies were granted to companies of this kind by the British Government, so extensive and so absolute as to make the possessors of them sovereigns of the country which they acquired, and over which their monopoly extended.[1] These companies, however, as pointed out by Smith, were not successful in proportion to the powers and privileges conferred upon them. "The Directors," he says, "of such companies being the managers of other people's money, rather than their own, it cannot well be expected that they would watch over it with the same anxious vigilance with which the partners in a private co-partnery frequently watch over theirs. It is on this account that Joint Stock Companies for foreign trade have seldom been able to maintain the competition against private adventures.

"They have accordingly very seldom succeeded without an exclusive privilege, and frequently have not succeeded with one. The *abbé Moretti* gives a list of fifty-five Joint Stock Companies for foreign trade which have been established in different parts of Europe since 1600, which, according to him have all failed from mismanagement, notwithstanding they possessed exclusive privileges.

"The only trade which it seems possible for a Joint Stock Company to carry on successfully without an exclusive privilege are those of which all the operations are capable of being reduced to what is called routine, or to such a uniformity of method as admits of little or no variation. Of this kind is perhaps the banking trade, the trade of insurance from fire and sea risks, the trade of making and maintaining a navigable cut or canal, and the trade of bringing water for the supply of a great city."

These were the views of a French writer with regard to Joint Stock Trading Companies, after a hundred years trial,

[1] Beawe's *Lex mercatoria.*

and it is worthy of remark that these were the principal objects for which they were first established and in which they have been most uniformly successful up to the present time.

During the latter half of the seventeenth century, viz.: during the reigns of Charles II. and James II. and the Prince of Orange, large numbers of Joint Stock Companies sprang into existence in Great Britain. The causes which gave rise to the establishment of these companies and the origin of the familiar term "stock-jobbing," are thus graphically described by Macaulay: "During the interval between the Restoration and the Revolution the riches of the nation had been rapidly increasing. Thousands of busy men found every Christmas that after the expenses of the year's housekeeping had been defrayed out of the year's income, a surplus remained, and how that surplus was to be employed was a question of some difficulty. * * * Three generations earlier a man who had accumulated wealth in a trade or profession, generally purchased real property, or let his savings on mortgage. But the number of acres in the Kingdom had remained the same, and the value of those acres though it had greatly increased had by no means increased so fast as the quantity of capital which was seeking for employment. Many, too, wished to put their money where they could find it at an hours' notice, and looked about for some species of property which could be more readily transferred than a house or field. A capitalist might lend out money on a personal security; but if he did so he ran a great risk of losing principal and interest.

"There were a few Joint Stock Companies among which the East India Company held the foremost place, but the demand for the stock of such companies was far greater than the supply. * * * The natural effect of this state of things was that a crowd of projectors, ingenious and absurd, honest and knavish, employed themselves in devising new schemes for the employment of redundant capital. It was about the year 1688 that the word "stock-jobber" was first heard in London. In the short space of four years a

crowd of companies, every one of which confidently held out to subscribers the hope of immense gains, sprang into existence: the Insurance Company, the Paper Company, the Lutestring Company, the Pearl Fishery Company, the Glass Bottle Company, the Alum Company, the Blythe Coal Company. There was a Tapestry Company, which would soon furnish pretty hangings for all the parlors of the middle classes, and for all the bed-chambers of the higher. There was a Copper Company, which proposed to explore the mines of England, and held out a hope that they would prove no less valuable than those of Potosi. There was a Diving Company, which undertook to bring up precious effects from shipwrecked vessels, and which announced that it had laid in a stock of wonderful machines resembling complete suits of armour. There was a Greenland Fishing Company, which could not fail to drive the Dutch whalers and herring busses out of the Northern Ocean. There was a Tanning Company, which promised to furnish leather superior to the best that was brought from Turkey or Russia. There was a society which undertook the office of giving gentlemen a liberal education on low terms, and which assumed the sounding name of the Royal Academies Company. In a pompous advertisement it was announced that the directors of the Royal Academies Company had engaged the best masters in every branch of knowledge, and were about to issue twenty thousand tickets at twenty shillings each. There was to be a lottery, two thousand prizes were to be drawn, and the fortunate holders of the prizes were to be taught, at the charge of the Company: Latin, Greek, Hebrew, French, Spanish, Conic Sections, Trigonometry, Heraldry, Japanning, Fortification, Book-keeping, and the art of Playing the Theorbo. Some of these companies took large mansions and printed their own advertisements in gilded letters. Others, less ostentatious, were content with ink, and met at coffee-houses in the neighbourhood of the Royal Exchange. Jonathan's and Garroway's were in a constant ferment with brokers, buyers, sellers, meetings of directors, meetings of

proprietors. Time bargains soon came into fashion. Extensive combinations were formed, and monstrous fables were circulated for the purpose of raising or depressing the price of shares. A mania, of which the symptoms were essentially the same with those of the mania of 1720, of the mania of 1825, of the mania of 1845, seized the public mind. An impatience to be rich, a contempt for those slow but sure gains which are the proper reward of industry, patience and thrift, spread through society. The spirit of the cogging dicers of Whitefriars took possession of the grave senators of the city, wardens of trades, deputies, aldermen. It was easier, and much more lucrative, to put forth a lying prospectus announcing a new stock, to persuade ignorant people that the dividends could not fall short of twenty per cent., and to part with five thousand pounds of this imaginary wealth for ten thousand solid guineas than to load a ship with a well-chosen cargo for Virginia or the Levant. Every day some new bubble was puffed into existence, rose buoyant, shone bright, burst, and was forgotten."

But though events like these were of daily occurrence in the commercial world their importance from a legal point of view appears to have been very slowly recognized. Though the progress of English commerce was very rapid, the progress of English Commercial Law was very slow. Though the commercial policy of England had from time immemorial excited the admiration of Europe, the commercial law of England was behind that of almost every other European State. There was indeed a *lex mercatoria* from a very early period, but its boundaries appear to have been very narrow, and these but partially understood or appreciated. That there must be rules and principles of law applicable to merchants, and their transactions, one with another, different from those applied to other members of the community—different from the ordinary rules of the common law, appears to have been recognized in England as well as in France. But for many centuries no attempt was made to define them. By all the old writers the *lex*

mercatoria is spoken of in the most vague and shadowy manner. In what it consisted or wherein it was to be found contained, is never very satisfactorily revealed.

The only idea which can be gathered concerning it is, that it consisted in what was termed "the custom of merchants," which was proveable by the merchants themselves.

Coke, following Littleton, refers to the *lex mercatoria* once or twice, but in the most incidental manner. For example, under the head of "Joynt-tenants," he says,—that to the rule, that all the debts, duties, etc., shall go to the survivor of them, "an exception is to be made of two joynt merchants, for the wares and merchandise which they shall have as joynt merchants shall not survive but shall go the executor of him that deceaseth, and this is *per legem mercatorium*, which, as has been said, is part of the law of the realm, etc."

And in another place following the Statute, 10 Henry VII., he says: "If two joynt merchants occupy their stock, goods and merchandise in common, to their common profit, one of them, naming himself a merchant, shall have an account against the other, naming him a merchant, and shall chargehim as *receptor denariorium*, etc., that is as receiver of the money of him, *B.*, for whatever cause and contractit shall redound to the common profit of them, *A.* and *B.*, as may be made appear by *lex mercatoria*."

The Statutes, concerning it were very few and very meagre in information. By the Statutes of Edward III. it was provided that "If any disturbance or abuse be offered them (*i. e.*, foreign merchants) or any other merchants in a corporation, and the head officer there do not provide a remedy, the franchise shall be seized, and the disturber shall answer in double damages and suffer one year's imprisonment."

In Williams' Digest of the Public Statutes, from Magna Charta to 48 George III. there is no mention whatever of partnership by name, though, as we have seen above, several Statutes had been passed, affirming the law applicable to joynt merchants, as distinguished from other "joynt tenants."

Indeed the number of Statutes passed during that long and important period of English law having reference to merchants at all, and which may be regarded as representing the whole *statutory* expression of the law merchant is very small, not exceeding twelve or fifteen, and the greater part of these belong to what would be called now the commercial policy of the country, rather than to the common law, governing the right of merchants among themselves in the multifarious relations they have to one another.

For example, by Magna Charta, it was enacted that all strangers, if they were not openly prohibited, were to be allowed to come, go, stay or pass, through the realm, by the rightful customs, except in time of war, and then they were to be well entreated, "if our merchants be well entreated there." But though the public Statutes, as well as the public writers of England, preserve an almost unbroken silence on the subject of commercial associations during so long a period, cases arising out of partnership and joint adventures must have from time to time been submitted to the law courts, the decision of which, even at a very early period, began to form the foundation of that jurisprudence, of those elaborate treaties which are the subject of so much admiration at the present day. And thus, we find in Comyns' Digest of the reported cases, a considerable number of decisions on this subject, which, being arranged in something like a logical order, form, as it were, the skeleton of the present law of partnership in that country.[1] All these, however, though embracing apparently all the published rules on the subject of partnership are not found *in verbo* partnership at all, but under the heading "merchant."

Indeed, the term "partnership," as signifying a separate and distinct branch of jurisprudence, seems up to this time to have been nowhere recognized in English law. The consequence is a certain amount of confusion between commercial and non-commercial partnerships, which continues in English law up to the present time. Thus, though a

[1] Comyn's Dig., Vol. v., p. 65.

vague and ill-defined, or, perhaps, altogether undefined theory attributed to the law merchant rules, principles and an application altogether distinct from the common law of the country, while Comyns, who attained to the highest honors of the profession and enjoyed, apparently, a reputation of great distinction and respect, arranges all the jurisprudence on the subject of partnership under the heading of "merchant," the common law writers, on the other hand, refer to it incidentally as part of the law of joint tenancy and partition. The nearest approach to an actual expression of the law merchant on the subject, is contained in two of the decisions given by Comyns. One of these points out what constitutes a merchant. It says: "There are four species of merchant, viz., merchant adventurers, merchants dormant, travellers, and merchants resident. *In general, every one shall be a merchant who traffics by way of buying and selling or bartering of goods or any merchandize within the realm or in foreign parts.*" By the other, the law merchant, with regard to survivorship, is said to extend to all merchants, *though they do not go beyond the sea.* This seems to confirm an impression which every one must derive from the early references to commerce in the law books, that is, that commerce meant simply international trading, and that commercial law was the law applicable to such international traffic and the transactions which arose from it, and was distinct altogether from the common law of the country.

Assuming this to be the case, and the decisions just quoted appear to afford the strongest possible evidence of it, this would account for much that is anomalous and confused in the references to the *lex mercatoria* and the class of transactions and contracts which were subject to it. Thus, Blackstone, in speaking of the King, says: "He is also the arbiter of domestic commerce (*not of foreign, which is regulated by the law of merchants*), etc. The case then stood thus during all the period referred to. The *lex mercatoria* was part of the law of England. [1]

[1] *Vide Supra* Co., Litt.

The operations of commerce (and particularly of foreign commerce) are regulated by the *lex mercatoria*.[1]

But the commentaries of Blackstone do not treat of *lex mercatoria*, being "*confined to the laws of England*."[2]

This tendency to confusion of commercial and non-commercial law which naturally arose everywhere, gave rise in France to the ordonnance of 1673. As expressed by a modern French writer[3] the legislature there recognized, that as commercial and non-commercial affairs were carried on neither by the same class of persons, nor under the same circumstances, that they could not be made subject to the same rules.

It (the legislature) understood that personal property, once of slight importance, had acquired, by the development of commerce, a value a hundred times that of immoveable property, and that, as this property was every day becoming more and more developed, was receiving fresh power and importance, that the interests of society and of commerce, *which are inseparable*, required that a line should be drawn between the two orders of things, and recognizing this, had by two different statutes declared the rules which governed the one, and the rules which governed the other. The result, as has been said, was the ordonnance of 1673. This was published under the authority of Louis XIV., a monarch as eminent for his peaceful conquests as for his military ones. In the preamble to the ordonnance he says: "We have for many years past made it our special care to render commerce flourishing throughout our kingdom. It has been our chief consideration to organize among our subjects, companies by means of which, they may be able to obtain directly from countries the most remote, those things which hitherto they have been able to obtain only by the medium of other nations." Hence, it is that the ordonnance contained a special title on the subject of partnerships,

[1] *Vide* Blackstone—"The Rights of Kings."
[2] *Ibid.*
[3] Delemarre and Poitvin, *Droit Com.*, p. 36.

beneath the ægis and authority of which, commercial associations of all kinds rapidly increased and strengthened.

There were associations for carrying on vast works for draining, in order to improve the agriculture of the country. There were associations for colonization, associations for improving the navy, and building and equipping vessels. About this time also was organized the first insurance company against maritime risks.

The capital of all these companies, and others too numerous to mention, was divided into shares *which were regarded as having a special or market value besides that marked on their face*. Melon, in his "*Essais politiques sur le commerce*," speaks in high terms of the *actions* or shares payable to bearer which obtained in other countries as possessing unlimited advantages for the development of commerce. At that time stock transactions were more extensively carried on in Holland than in any other country, the *Exchange* of Amsterdam, "governed by sound regulations," being constantly occupied by an ever-changing vicissitude of sale and re-sale, from which large profits were derived. But the actual scope and object of this kind of association was but imperfectly understood, and, in consequence, was much exaggerated everywhere. In the hands of designing and unscrupulous men, it became a ready and powerful instrument of fraud; others again, though in the best of faith, were themselves the victims of its attractions. Law, whose name will last as long as banks and bank-stocks endure, it is impossible to believe, saw, himself, the disastrous results of the magnificent enterprise he was setting on foot. There can be no doubt whatever but that he, himself, was as much a victim of the *ignis fatuus* created by this new system of conducting commercial operations, as those who crowded daily the *Rue Quincampoix*, demanding shares. It is an interesting and noteworthy fact that the South Sea Company in England and Law's Mississippi Scheme were organized, if not the same year, as, indeed, is stated by some writers, at least within the same decade. The former

is said to have been started in 1710. Delangle,[1] who gives an interesting sketch of Law's scheme, places the foundation of it in 1717.

The National Bank, which he formed, was the outcome of the Mississippi Scheme and East India Company combined, and of the fond hopes and illusions to which these gave rise. These are attributed by Delangle to the fact, that this was the first instance in France of stocks or shares advancing to a premium, or price above their face value.

The novelty of this movement, and the apparently unlimited extent to which it might be carried, seemed to open to the excited minds of the public of all classes, the means of untold wealth. The shares rose rapidly, and at one time attained a height forty times that of their original value.[2]

Noblemen, who, by the edicts of 1664, were enabled to take part in such commercial and financial operations without derogation of rank, beseiged Law's head-quarters in their eagerness to subscribe. Landed proprietors sold their lands, and titled ladies their jewels, in order to obtain shares. The circulation of the Bank paper reached an amount four times that of the entire national resources. Fortunes were made in a day, and servants became as rich as their masters. But the time was not far off when these illusions were to vanish. It was ere long to be discovered, that the paper had no value beyond that of the property it represented. At the end of December, 1719, the shares, which were issued at 500, had reached 20,000 francs; in June, 1720, they had fallen to 2,500; in October of the same year they were worth only 200; in November, just one year from their issue, they were worth nothing. The *Place* Vendome was converted into a grand bazaar where the jewellry, carriages, horses and furniture of the victims, were sold.

In Great Britain, the same causes were producing the same disastrous effects. The idea, that by the association of capital in the hands of companies, each shareholder

[1] Delangle, Intro., p. xlii.
[2] Delangle, p. xlv.

would, by some mysterious process, become rich, had seized hold of the public mind. The poor embarked their hardly-earned and anxiously hoarded savings, the rich embarked their fortunes.

About the time of the institution of Law's Bank, was organized in London the South Sea Company. It was incorporated in 1716.[1] This scheme, though ending also in disaster, was not on so gigantic a scale as its French counterpart, and lasted somewhat longer. The shares, which were issued at £100, rose at one time to £1,000, or in other words to ten times their value; the bubble burst in 1720, after four years of corporate existence, and in the following year the directors' estates, to the value, it is said, of two million pounds sterling, were brought to the hammer.

These events struck a serious and almost fatal blow at commercial enterprise, from which it took some years to recover. The popularity of the Joint Stock principle was gone. The public, both of France and England, naturally enough, lost all confidence in them. They regarded them now, as a new instrument of fraud in the hands of designing and unprincipled men. Long and sanguinary wars called off both the attention and the capital of the public to other scenes, and the commerce of Europe declined.

Not the least remarkable feature of these events however, is the very small place which they occupy in the legal literature of the day. In Great Britain especially, they appear to have excited no remark. That they had any importance from a legal point of view appeared to have been entirely unperceived. No legal status, apart from that of ordinary corporations, was accorded the associations which caused them.

Blackstone, who wrote long subsequently to these events, as has been already stated, refers to "trading companies" in the most incidental manner.

During the next half a century associations of this kind made very little progress, either in France or England. In

[1] Haydn's Dictionary of Dates.

the former country, after the outbreak of the revolution, and the downfall of the Monarchy, all privileged associations were suppressed, as relics of tyranny and as opposed to the spirit of universal liberty which then prevailed. But their suppression was only temporary. Under the wiser rule of the First Consul, their national value was recognized and their legal existence established. By the *decret* of the 30th Brumiere in the fourth year of the Republic, and two years after they had been declared illegal, it was ordained that: *La loi du 26 Germinal, an., 2, concernant les compagnies et les associations commerciales est abrogée.* The result of this *decret* was, that a large number of these associations immediately sprang into existence spontaneously —that is to say, without the authority of a special act— and, as considerable difficulty was experienced in deciding what were the rights of the parties to such *compagnies*, they were recognized and embodied in the *code de commerce*, which established that no partnership of this kind could be formed, without a special ordinance by which it was to be governed.

The *Code de Commerce* does two things. It separates and defines commercial associations from those *sociétés* which were regulated strictly by the *Code Civile*, and it gives the rules especially applicable to the *société commerciale*. The touchstone of the *société commerciale* is a list of transactions or operations, which it terms *actes de commérce*. All partnerships which do not come under one or the other of the objects enumerated in this list, are not *sociétés commerciales*, and the rules governing such *sociétés* do not apply to them. By the common law of England no such definition is attempted. The question as to the commercial or non-commercial nature of a transaction or of an association, is one for the jury to decide. Much difference of opinion exists as to the superiority of the two systems. On the one side it is contended that any attempt at an enumeration and definition of commercial matters can cover at most but a very small proportion of those cases in which doubt must necessarily arise, and will, therefore, tend to hamper and confuse

rather than assist in the elucidation of such doubts.[1] On the other, that the danger and confusion is more apparent than real,[2] and that where these questions are decided and established by law, justice is more likely to be done than where they are left to the uncertain opinion of a judge, or the still more uncertain views of a jury. This latter view appears to derive some force from the fact that the English legislature in making provision for the winding up of bankrupt estates, has, of late years, found it necessary to enumerate those who are deemed "traders." In the different Provinces comprising the Dominion of Canada, the English system is however followed, for, although in the Province of Quebec, the classification of partnerships and particularly of commercial partnerships, is that of the French law, no enumeration of commercial affairs is attempted.

The *Code de Commérce* also classifies and enumerates the different kinds of commercial associations.

These are the *société*:

1. *En nom collectifs*, the object of which is to do business under a firm name, and the principal effect of which is (as distinguished from other associations) to bind the partners jointly and severally for the obligations of the partnership.

2. *En Commandite*, the object of which is the same, but in which some of the partners are merely bailors of money or merchandize to others, and incur no such liability as long as they do not take part in the management of the partnership affairs.

3. *Anonyme*, an association of capital rather than of persons, existing only under special authority of the Government, the capital being divided into shares or *actions* payable to bearer.

This form of association, which is in all respects the Joint Stock Company (limited) of English speaking communities, is, as we have seen, derived from the other forms of commercial association in the order in which they are placed

[1] Smith's Mercantile Law, Intro.

[2] Delangle, *Soc. Com.* p. 31.

by slow but regulated growth. Some of its features, it is true, were borrowed from other countries, as the division of capital into shares to bearer, which, according to the modern French writers[1] passed from Holland to England, and thence to France, but, in the main, the *société anonyme* is derived by regular progression from the simplest forms of commercial associations in France. Upwards of a thousand of these associations, it is said, are annually authorized in France at the present day,[2] while a similar number annually become bankrupt, and are wound up for one reason or another, and pass out of existence. They are formed by petition to the Prefect of the Department, containing a designation of the business to be carried on, the time for which the association is formed, the names and domiciles of the petitioners, the amount of capital, whether by simple subscription or by shares, the time within which the capital is to be paid, the chief office and place of business, the system of management, and finally, the articles of partnership. The charter granted, fixes a minimum below which the capital cannot descend without forfeiture. Such are the principal forms of commercial associations in France at the present day, the affairs of which, like all commercial affairs, when an appeal to judicial arbitration is necessary, are decided by a tribunal of merchants called the *Tribunal de Commerce*.

In England and the United States associations of this kind are divided at common law into

Universal.

Particular, { General. / Limited. / Joint Stock Companies.

The first of these sub-divisions corresponds to the *société en nom collectif* of the French law, and the second to the *société en commandite*.[3]

[1] Delangle, *Soc. Com.* p. 4, part II.

A Paris telegram of Oct. 1, 1879, says:—"The aggregate stock subscriptions invited for the last three months, exclusive of the Panama Canal, amount to 1,068,000,000 francs, and yet new schemes are being published.

[3] The limited partnership system is quite common both in this country and the United States, the limited partner being known sometimes as a "silent" or "sleeping," but more commonly as a "special partner."

They are also divided into Private and Public. The latter are usually termed companies, where a large number of persons are concerned, and the stock is divided into shares—the object of the undertaking being of an important nature, and often embracing public as well as private interests. But these, in most cases, are mere private associations, for, in the sense of the law, no company is a public company whose interests do not exclusively belong to the public, and are exclusively subject to public control.[1]

In Scotland, they are divided into ordinary partnerships, Joint Stock Companies, and Public Companies. There an ordinary partnership differs from an association of the same character in England, inasmuch as it is deemed a separate person in law, capable of entering into contracts, of holding personal property and of carrying on legal proceedings by its distinctive name or firm.[2] In this respect, it resembles an incorporated company or association possessing an existence altogether apart from the different members composing it, and can sue even its own members and be sued by them. But, by the law of England (and also of France), a private partnership of two or more persons is not recognized separately from the persons of which it is composed. In an action, at common law, by or against a private partnership, all the partners must concur individually, either as plaintiffs or defendants.

This is the fundamental difference between a private partnership and a regularly chartered Joint Stock Company, and it is one of the chief objects of incorporation to overcome this difference.

Another feature of an incorporated company, which distinguishes it from an ordinary partnership is, that having an existence apart from the members comprising it, the continuity of such existence is not affected by changes among its members. Therefore, all corporations, or incorporated companies, formed for the purpose of gain,

[1] Story, Part. sec. 71.
[2] Mackenzie.

may be said to be partnerships, but all partnerships are not corporations.[1]

Another distinction between an ordinary partnership and an incorporated company, which must not be lost sight of, is that the former usually consists of a very limited number of persons, all of whom are acquainted with each other, and who entertain towards each other a certain amount of friendship and confidence, a confidence all the more necessary, inasmuch as all the members being jointly and severally liable for the undertakings and obligations of the partnership, all are supposed to have a right to take part in the operations of the partnership, and to be consulted as to its affairs, and to be in fact the agents of each other in all that relates to the business of the firm. In incorporated companies these features are entirely wanting.

There the different members cannot bind the association by their individual acts, nor are they as a rule consulted with regard to its affairs, save at stated periods.

In Canada, the English law with respect to simple partnership obtains, except in the Province of Quebec, where the system and classification is that of the French law, with one or two slight differences. The *société anonyme* of the Quebec code is not that of the *code de commerce*, but rather that of the ordonnance of 1673, while the *société anonyme* or *société par actions* of the *code de commerce* is there called according to the English system, Joint Stock Companies, or in the French version, *sociétés par actions*. Neither is there in the Quebec Civil Code any attempt at enumeration of the different classes of commercial affairs and commercial associations, as distinguished from those purely civil, such as is given in the Code de Commerce. The only definition is the general one, that "commercial partnerships are those which are contracted for carrying on any trade, manufacture or other business of a commercial nature, whether general, or limited to a special branch or adventure."

[1] Lindley, Part. p. 1.
Lindley, Part. 200

Neither is there any tribunal specially created to take cognizance of commercial affairs. The ordinary tribunals of the Province try all cases, civil and commercial, decide which is which, and adjudicate accordingly. Matters not within the province or knowledge of a judge, such as those pertaining to the usages of trade, are tried by a jury of men versed in the questions to be decided. This, it will be seen, at once, is a mixture both of the French and English systems, and combines the best features of both. Questions of value or accounts as between co-partners, are referred to experts, who report to the court, and whose report is adopted or rejected, according to its regularity.

These are the principal forms of commercial association in the different countries mentioned, and the different means employed for settling the various questions arising out of them. Of these, the simpler and most common form in all countries, is the ordinary partnership under a collective or firm name, as John Smith & Co. This offers the greatest facilities for all the ordinary affairs of commercial life. It requires no formality except that in most countries, of a registration of the names of the partners in some public way, in order that the public may have an opportunity of knowing with whom they are dealing, and whom they can legally hold for the obligations of the partnership. The rules concerning the rights and obligations of the partners, one toward each other, in this form of partnership, the rights and obligations of the partners towards third persons, and the different modes by which the partnership may be terminated, are now well understood and established.

Midway between the ordinary partnership just referred to, and the Joint Stock Company, and partaking in some respects of the nature of both, stands the limited partnership, or *Société en Commandite* of the French law. The origin of this species of Commercial Association has already been referred to, and it will suffice for the purposes of this work to mention here a few of its principal features. It resembles an ordinary partnership in this, that it has one or more

general partners whose names are public, and who are responsible *in solido* and to the full extent of their means for the obligations of the partnership. But while this must always be the case, it partakes of the nature of a Joint Stock Company in this, that it must have one or more contributors to its capital who are called "special partners," and who are liable only to the extent of the capital they have contributed, or have agreed to contribute. This resemblance to Joint Stock Companies is greater in France (than in the other countries named) since the *Code de Commerce* which, by the 37th Act, provides that "The capital of limited partnerships, may also (*i.e.*, in the same manner as that of anonymous partnerships) be divided into shares without any other derogation from the rules established for this kind of partnership." These shares may be held, circulated and transferred precisely as the stock of of chartered or incorporated companies. This provision of the French law necessarily creates another and important resemblance to the Joint Stock Companies, viz.: the power possessed by the special partners under this system to sell their shares at any time, and thus retire from the firm without producing any practical change in the status of the partnership. But, unlike a Joint Stock Company, the removal or death of a general partner involves the dissolution of the partnership, unless otherwise provided for.[1] There are also several other and important distinctions, even in France, between the Limited Partnership and the *Société Anonyme* or Joint Stock Company.

Thus, for instance, in the latter there is no division of the partners into general and special. No particular members of the association are exclusively responsible. No particular members are excluded from the administration of the affairs of the association or are liable for interfering in such administration. Again, in a Joint Stock Company, as we shall see more fully hereafter, there is a corporate seal with corporate liability, a feature which is

[1] Tronbat, Limited Partnership, p. 438.

totally wanting in limited partnership associations.[1] With regard to these points of difference, Troplong says: "Incorporated Companies bear some analogy to Limited Partnerships, but they differ in one essential: that is, the corporate and paid in capital has no representatives personally and indefinitely responsible. A corporation only offers to the public a patrimony as security, but no guarantee of persons.[2] And, besides exemption for personal responsibility for all the debts, they permit the shareholders to take part in the management and conduct of the operations, to watch and control their agents, and not like limited partners, obliged to trust to the good faith of their general partner.[3] And Delangle still more graphically describes this difference. He says: "The difference between the organization of a limited co-partnership and an incorporated company, established even for carrying on the same business, is, in regard to the management or direction, in nothing more striking than in the characters of the general partners in the former, and the president and directors in the latter. In the one, the existence of the managing partners is interwoven with the existence of the contract of association. A general partner is a substantial party to the contract; and if, by any unforseen event, his power as such should be resisted or destroyed, the partnership must at the same time stop or come to an end. In default of an express stipulation to the contrary—he being a party to the covenant—the retirement or removal of a general partner dissolves a limited partnership. Not so in an incorporated partnership. There, person is nothing. The partners do not choose each other, they may be ignorant of each other's existence. They constitute but a reunion of capitals for the increment thereof. The direction, therefore, need not have a permanent organization. The persons composing it may, without inconvenience or danger, be changed. The directors are simply agents, and not partners, in view of law: revocability is of the essence of their creation.

[1] Tronbat, Limited Partnership, p. 438.

[2] Troplong, *Soc.* Vol I., p. 121.

[3] Troplong, quoted by Tronbat, p. 146.

They may be changed every month : they have never been responsible as partners. The joint capital which they administer is alone responsible, no matter who they are, for the debts of the company. But the connection or identity of a general partner with the organization of a limited partnership is not however, a chain or fetter upon the special partners which they cannot in any contingency sever or unloose. An abuse of confidence on his part, alleged and proved by the latter in a Court of Justice, is sufficient to remove him, and should in such case, the original contract have provided for a substitute, the partnership is not dissolved in France, but the parties may proceed, according to the provisions of such contract, to choose and substitute another."

It would appear also, that the capital of a limited partnership in France may be contributed in cash or in other species of property, such as goods or merchandize, wherein also it differs from Joint Stock Companies, and wherein also it differs from the law relating to limited partnerships in most other countries.

By the Statutes of Florida and Louisiana, however, following the usage in France, the special partners may contribute to a limited partnership, "either in property or money," but in all the other States of the Union, the Statutes relating to limited partnerships require in the most positive terms, that the contributions of special partners to the joint capital, shall be in cash.[1] By the civil code of the Province of Quebec also, it is provided that the contributions of special partners must be in cash.[2] With regard to profits and their distribution, during the continuance of the partnership, both the doctrine and practice have varied at various times and in various countries. Some of the decisions of France have gone so far as to say, that legitimate profits divided and expended could be recalled, in case of loss or of an insufficiency of assets to meet the liabilities of the partnership. But by the code of Louisiana, it is provided that the partner *in commendam* cannot be called upon by the

[1] Trombat. Limited Partnership, p. 42

[2] Que. C. C. Art, 1872.

partnership or its creditors to refund any dividend he may have received of net profits, fairly made during the solvency of the parties, and *bona fide* at a time stipulated in the articles of partnership,[1] and by the Quebec code that a special partner may annually receive lawful interest on the sum contributed by him, if the payment of such interest do not reduce the amount of the capital, "and," says the Quebec code[2] "he may also receive his portion of the profits." In the United States, the rule with regard to interest or profits differs in different States. In the States of New York and Pennsylvania, for instance, the Statutes establish the right of the special partners to draw legal interest on their investments, while the Statutes of the States of Connecticut and Maryland, on the contrary, prohibit the payment of interest or division of profits during the continuance of the partnership. This rule, the object of which is clearly to prevent that abuse to which this kind of partnership is especially susceptible, would appear to be rather stringent, and calculated to discourage in a very great degree the formation of, or contribution to limited partnerships at all. For who, with money to invest, would care to embark in an enterprise from which they could derive nothing? that even until the termination of the enterprise or the conclusion or dissolution of the partnership? Clearly it would exclude people of small means from this kind of association entirely, while on the other hand some rule concerning the division of profits, some restriction concerning the payment of money to special partners, in the shape of interest or otherwise, is calculated to supply that safeguard, the want of which is such a frequent cause of ruin among ordinary partnerships, and of loss to creditors. There it seems impossible to provide any restriction of this kind and the only security which a creditor of an ordinary partnership possesses, is the character of the partners themselves. Two partners, who represent themselves as starting in business to-day with ten thousand dollars capital, may have drawn out again half that amount for their

[1] Art 2814. [2] Art. 1882.

private expenditure before the expiration of the year. This is indeed one of the most prolific sources of failure in ordinary partnerships, and it is to guard against this that rules similar to the above are provided. A special partner may examine into the affairs of the partnership but cannot take part in the management of them without incurring the liability of a general partner. In some of the United States, however, it has been held that attorneys-at-law may act as the legal advisers of the partnership in which they are special partners.[1]

With regard to the formation and registration of a limited partnership, the system appears to be the same in most of the countries referred to, except that in France, the names of the special partners need not be made public, but parties dealing with the firm may learn the names of the co-partners by examining the deed of partnership.[2] The certificate for registration in France must contain:

1. The business style of the partnership.

2. A designation of such of the partners as have been authorized to conduct the business, direct its affairs and sign for the firm.

3. The amount of values contributed or to be contributed upon shares or by the special partners.

4. The time when the partnership is to commence and that of its termination.

Under the Statute of Pennsylvania, which is given by Troubat as a fair specimen of those found in the different States of the Union, the contents of the certification are almost identical with those designated by the Civil Code of the Province of Quebec, which, in turn, agree with those given above, with the exception already referred to, viz.: that in France the names of the special partners are omitted, whereas, in the others, they are essential to the validity of the certificate. This difference arises clearly from another already stated, viz.: that in France the capital may

[1] Troubat Limited Partnership, p. 171.

[2] *Code de Commerce*, Art. 43.

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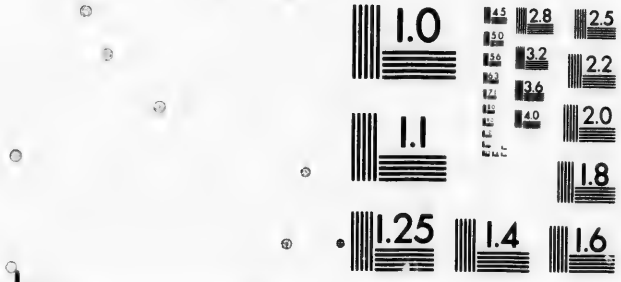

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be divided into shares payable to bearer, whereas, in the other countries such a system is unknown. Under such a system, if the names of the special partners were to be included in the certificate they would require to be changed with every transfer of shares, a system which would involve an unnecessary amount of labour, if, indeed, it would not be found to be virtually impracticable. This difference between the *Société en Commandite* of France, and the limited partnership of the United States and the Province of Quebec involves still another difference, and one which brings the limited partnership of the former country into still closer relationship with the Joint Stock Company.

It is that in France, where the capital consists in shares payable to bearer, the death of a special partner does not involve the dissolution of the partnership. The shares may be passed in the freest possible manner, from hand to hand, without any change in the statutes of the partnership resulting therefrom. The partnership in fact contains in a rudimentary form, the germ or principle of perpetual succession. But this only in France, and as regards the special partners.

The death of a general partner operates the dissolution of the partnership there as elsewhere.

In all other countries the limited partnership is dissolved by the same causes as ordinary partnerships under a collective name. It can, however, be stipulated in the articles of associations that the partnership may, in case of the death of a general or special partner, be continued in the heirs and successors of such partner. Any dissolution by the will of one or more of the partners before the time specified in the certificate, must be signified, in France, by the same formalities as the formation, and in most of the United States, and also in the Province of Quebec, by the additional formality of publication in a public journal once a week for three or four weeks.

This brings us to Joint Stock Companies the rules and practice of which, as followed in all English speaking countries at the present day, we propose now to consider.

THE LAW AND PRACTICE

OF

JOINT STOCK COMPANIES.

CHAPTER I.

DEFINITION OF, ETC.

(a) *What are Joint Stock Companies?*
(b) *May be Incorporated or Unincorporated.*
(c) *What are Corporations?*
(d) *Difference between Corporations and Companies.*
(e) *Law applicable to Companies.*
(f) *Growth of Companies.*
(g) *May be Commercial or Non-commercial.*
(h) *May be Public or Private.*
(i) *Canadian Legislation.*

1. Definition of, etc.

(a) *What are Joint Stock Companies?* A Joint Stock Company is not easily defined with accuracy. It has been described as "an association of individuals *for purposes of profit*, possessing a common capital contributed by the members composing it, such capital being *commonly* divided into shares of which each member possesses one or more, and which are transferable by the owner."[1]

This is not very exact. A Joint Stock Company is not necessarily formed for purposes of profit, but it is neces-

[1] Shelford Joint Stock Companies. 2nd Ed., p. 1.

sary, at least according to almost all the Joint Stock Companies Acts, that the capital be divided into shares or stock.[1]

(*b*) *May be incorporated or unincorporated.* They may be either incorporated or unincorporated, but when unincorporated, are, in the eyes of the law, only ordinary partnerships on a more extensive scale,[2] and, by the Civil Code of Quebec, are subject to the same general rules as a partnership under a collective name.[3] By the law of England, a large partnership, having transferable shares, is treated as illegal, and by the Joint Stock Companies Act, 1862,[4] "No Company, Association or Partnership consisting of more than twenty persons shall be formed for the purpose of carrying on any business that has for its object the acquisition of gain by the company, association or partnership, or by the individual members thereof, unless registered as a company under the Act, or formed under public authority in some other way." But when so formed or registered they constitute, *as a rule*,[5] a body corporate by the name set forth in their memorandum, or charter, capable of exercising all the functions of an incorporated company, etc. Such incorporated companies differ, nevertheless, in several particulars, from a perfect corporation.[6]

[1] Act (Imp.), 1862, sec. 181. This is probably the only Act in existence which defines in so many words what a Joint Stock Company is. It says: "A Joint Stock Company shall be deemed to be a company having a permanent paid-up or nominal capital of fixed amount divided into shares, also of fixed amount or held and transferable as stock, or divided and held partly in one way and partly in the other, and formed on the principle of having for its members, the holders of shares in such capital or the holders of such stock and no other persons."

[2] Shelford, p. 1.

[3] Civil Code Art., 1889.

[4] Referred to supra.

[5] By 7 Will. IV. and 1 Vic., chap. 73, letters patent could be granted, which did not convey incorporation at all, but merely some of the privileges of incorporation, such as suing and being sued by a public officer.

[6] The term Joint Stock Company has never been used in the Statutes of Massachusetts as descriptive of a corporation erected by special Act of the Legislature and authorized to issue certificates of stock to its shareholders. It describes a partnership made up of many persons acting under articles of association for the purpose of carrying on a particular business and having a capital stock divided into shares transferable at the pleasure of the holder. The statute provides that a number of persons thus associating themselves to carry on business may, upon complying with the requisite forms and regulations, become corporations. Differing so materially in

(*c*) *What are corporations?* A corporation by the common law of England is a fictitious person created by special authority, and endowed by that authority with a capacity to acquire rights and incur obligations.[1] Its existence is entirely independent of the persons by whom it is composed, or represented, and its rights and liabilities are entirely independent of the rights and liabilities of such persons. In its operation and management it is governed by the rules of the common law, and of its charter.

(*d*) *Difference between corporations and companies.* "Not so a Joint Stock Company, though constituted a body corporate, with all the functions," etc. Though an artificial person in contemplation of law, its interests are, in most cases, strictly identical with those of the individuals composing it. They possess a direct interest and property in the assets of such company, and may command at certain stated intervals, a division and distribution of the profits, if any, arising from such assets,[2] while on the contrary they may be liable for its losses to the full extent of their means. In their operation and management, they are governed by rules peculiar to themselves, or to the legislative authority by which they were created.[3] While it is doubted whether the members of a corporation can, under the common law, voluntarily allow it to die out,[4] express provision is made by many of the Companies' Acts for the winding up of a company at the will of a majority of the members.

In consequence of these distinctions they have been said by one authority to occupy a position intermediate between corporations known to the common law and ordinary partnerships, as the law applicable to them is derived as much

their origin from corporations created by special charter, the term "Joint Stock Company" is an apt and proper description of them as companies or corporations originally formed under articles of association. *Attorney-Gen.* v. *Mer. Ass. Co.*, 121 Mass., 524. Su. Ct. 1877.

[1] Lindley, Part, p. 2.

[2] That is by a vote of the majority of them, or of a majority of a quorum of them taken at a regular meeting, but a single shareholder has no right to demand a division of profits. He can however sue for it after a dividend is declared, *vide post*.

[3] *Vide* Sec. 25 of Act, *post*.

[4] Brice, Ultra Vires. 2nd Ed., p. 910.

from the principles which govern ordinary partnerships as from those regulating corporations, strictly so-called.[1] By another, they are dubbed *quasi* Corporations,[2] as partaking of corporate power, but with several incidents of partnership, and in another case held, that if they have registered as a company, they cannot afterwards register so as to lead the world to suppose them a corporation.[5]

In the United States, these distinctions are not apparently recognized. Any body of persons, authorized to sue and be sued, and to act as one for all the purposes of their creation, is there termed a corporation, and comes under the general rules relating to such bodies, except in so far as otherwise specially provided for.

This was very clearly laid down in *The People* v. *Assessors of Watertown*[3] in which Bronson, J., said "Whether a corporation or not, does not depend upon the number or magnitude of its powers, nor the manner in which they were conferred. An association under one general head for a village library, or to tan hides, possesses all the essential attributes of a corporation, in as great perfection as the Bank of England, or the East India Company. Nor is it important in what mode or by what particular agency this artificial being transacts its business. It is enough that it has a capacity to act in some form as a legal being." The Constitution of New York also[4] declares that the term corporation, as used in that State, shall be construed to include all associations or Joint Stock Companies, having any of the powers not possessed by individuals or partnerships. But in England, and indeed in this country, the differences mentioned still serve to distinguish Joint Stock Companies from the ordinary common law corporation.

[1] Lindley, Part, 2.

[2] Parke, B., in *Ridley* v. *Plymouth*, *vide* Grant Corporations, p. 625. *Note.*

[3] Hill, 622.

[4] Art. 8, sec. 3.

[5] Hence in the United States the whole subject is treated of, as by Angell & Ames, Field and others, under the generic title of corporations, while in England, Corporations and Joint Stock Companies are treated as subjects almost totally distinct from each other.

(e) Law applicable to Companies. But, notwithstanding these distinctions, the law applicable to such associations is the common law of corporations where other provision has not been made. Every departure from that law, in the regulation of companies and associations actually incorporated, has been either previously authorized or subsequently adopted by legislative authority as the law applicable to companies, as distinguished from corporations, nor has it ever been doubted that the rules of the latter governed where the former were wanting. It is to the common law that the courts are compelled to turn in the absence of special provision in the charter or authority under which the company was formed. In the United States, as has been said, all corporate associations are treated of under the same head, while in England the rules concerning Joint Stock Companies are treated as a separate subject.[1]

These rules as far as a Joint Stock Company formed under Canadian Joint Stock Companies' Acts is concerned, are:

1. The provisions of the Act under which it was formed.
2. The decisions of the courts under the same or similar circumstances.
3. The rules of the common law respecting corporations where the former are wanting.

It is in this order that courts are called upon to examine the various sources of law applicable to the affairs of Joint Stock Companies.

(f) Growth of. Again, corporations have existed from time immemorial, while Joint Stock Companies, as recognized in English law at least, are of very recent date.

[1] This attempt to draw a line between the two, which has been extended to this country, has led apparently to some confusion of ideas on the subject, at least in the Province of Quebec. By the Civil Code of that Province, Joint Stock Companies—following apparently the French system—are classed with commercial partnerships, and altogether apart from corporations generally, while by a recent Quebec Act making provision for the voluntary winding up of Joint Stock Companies, we find that several articles of the Code concerning corporations are said to be modified thereby.

The first associations formed for trading purposes under authority of the Crown or Parliament, appear to have been constituted corporations proper, and subject to the rules of such corporations. Among these were the Bank of England, the South Sea Company, and others. The former of these indeed, is said to have been the first corporation that the Crown was empowered by statute, to grant a charter to incorporating it *for a limited period*—one of the leading features of a corporation in the eyes of the common law being its immortality or faculty of unlimited duration.

With the increase of trade however, large numbers of associations were formed with a capital divided into shares, and working on the same general principles as a corporation, but without any public recognition or incorporation whatever.

Being therefore, in the eye of the law, but partnerships, but, at the same time partnerships to which the rules of partnership could be applied only with great difficulty, and oftentimes with hardship, the legislature was resorted to for relief. The first remedy attempted was simple if not profound. It was to suppress them altogether. This, however, did not succeed, and the Act was repealed in 1825, and replaced by another, which empowered the Crown to provide, in granting charters of incorporation, that the members should be individually liable for the debts of the corporation. This was the second deviation from the rules of ordinary corporations. In other words, the Crown was authorized to grant patents of incorporation, which conveyed only some of the privileges of corporations proper, and by 1 Vic. cap. 73, [1] Parliament, went still further, and authorized the Crown to grant letters patent, conveying some of the privileges of a corporation without incorporation at all. Power was at the same time given to limit the liability of the members to a certain amount on

[1] Referred to supra.

each share.[1] But it was not until 1855, that a general system, such as that at present in force, was adopted. By the Act, 18-19 Vic. cap. 133, all companies, except insurance companies, by observing the rules regarding registration prescribed by the Act of 1844, were enabled to obtain the privileges of a Joint Stock Company, with limited liability. All the various enactments on the subject were consolidated into one general Joint Stock Companies' Act in 1856; and this again having suffered numerous amendments and modifications, was replaced by the Act of 1862, which, with the aid of a supplementary Act in 1871, and one or two declaratory amendments, still governs.

The system provided by this Act is one of registration merely. A memorandum of associations is subscribed by the promoters, and delivered to the Registrar of Joint Stock Companies, together with certain fees, whereupon they are entitled to receive a certificate of incorporation, according to the terms of their declaration, and their articles of association; and the subscribers, together with such persons as may from time to time become members, are a body corporate by the name contained in the memorandum of association, "capable of exercising all the functions of an incorporated company, and having a perpetual succession and a common seal, with power to hold lands," etc.

Companies formed in this manner differ in some respects from those created by charter or special statute,, even for similar purposes;[2] while, again, under the English Acts, as we have seen, letters patent may be granted, which do not convey incorporation at all, although letters patent and charters are in general the same thing.[3]

[1] This question of limited liability appears to have been at all times a great bug-bear with the common law advocates. A very recent English writer (Cox) opens with some bitterly satirical remarks on the principle of limited liability, but the still more recent Glasgow Bank disasters have demonstrated so forcibly the necessity of some such provision that the Legislature has just now (August, 1879,) passed an Act to enable those banks whose liability is unlimited to change their basis in this respect.

[2] Lindley, Part, p. 203.

[3] *Ibid*, p. 145, and Blackstone on "Corporations."

(*g*) *Commercial and non-commercial.* That this system of incorporation grew out of and was designed to meet the necessities of trade is clear from the tenor of the Acts themselves, and from the manner in which it has been treated by the numerous writers who have regarded it almost exclusively from a commercial point of view.[1] But its advantages are not confined to these. All the English Acts (as well as the Canadian) are made to apply not only to "trading companies," but to "other associations," while the "Imperial Act of 1867, has a special clause providing for the registration of any association proved to be formed for the purpose of promoting commerce, science, religion, charity, or any other useful object, to which object its income is to be exclusively applied, and that such association may obtain at the same time a certificate of limited liability, without the addition of the word "limited" to its name.

But while all the Acts providing for the formation and incorporation of Joint Stock Companies, extend their provisions to those of a non-commercial as well as those of a commercial character, and such provisions and advantages have largely been made use and avail of by both, it is to trading associations chiefly that the following chapters will refer.

(*h*) *Public and private.* Some confusion appears to exist also as to the exact meaning of the terms "public," and "private," when applied to incorporated bodies; nor does it appear easy to lay down any general rule in regard to them. According to the latest English authority,[2] the term "public," when so applied, has two meanings—that is to say, that there may be a "public corporation," and there may be a "public company," and the two are different—the first, those which are created solely in the interest of, and are controlled by the public at large, such as Municipal Bodies; the second, Joint Stock Companies in which the public have an interest, but do not necesarily control, as railways,

[1] *e. g.* Shelford, supra, p. 1.
[2] Brice, "Ultra Vires," 2nd Ed., p. 18.

etc. But this distinction seems a hard one to follow, as in all companies the public have more or less interest in proportion to their importance to the general welfare of the country.

According to one American authority, "The main distinction between public and private corporations is, that over the former, the legislature, as the trustee or guardian of the public interests, has the exclusive and unrestrained control."[1] According to another, "Public corporations are formed or organized for the government of a portion of a State; all other corporations are private."[2]

The latter classification appears to go too far the other way, as companies may be created for the management of roads, canals, etc., and which remain as such, though confided to managers and trustees, entirely under the control of the legislature.

In a comparatively recent case in the United States, it was held that if created to advance private interests, though beneficial to the whole community, it is a private corporation.[3] And, in another, that a Canal Company, though chartered for public purposes, and authorized to take private property for the use of its works, may be a private corporation, nor does the fact, that the State itself is a large shareholder, impart any of its sovereignty, or alter the status of the company.[4] And, in another, that *quasi*-public corporations are, technically, private, but have in view great public enterprises in which the public interests are directly involved to such an extent as to justify conferring upon them important governmental powers, such as the right of eminent domain.[5]

The true test appears to be, has the legislature, in incorporating such companies, retained control of them for the use and on behalf of the public? If they have not the

[1] Angell & Ames, Corporations, sec. 31.
[2] Code of California, Art. 284.
[3] *Directors, etc.*, v. *Houston*, 71, Ill. 318, Su. Ct., 1874.
[4] *Brady* v. *State*, 26 Ind., 290, 302, App., 1866.
[5] *The Miners' Ditch Co.* v. *Zellerbach*, Su. Ct. Cal. 250.

company is a private one, and cannot be interfered with as long as it keeps within its franchise.

And guided by this test it may be safely assumed, that all companies chartered under the Joint Stock Companies' Acts, are private companies, and therefore it is with them in particular that this work is concerned.[2]

(*i*) *Canadian Legislation.* Prior to 1864 Joint Stock Companies in Canada were for the most part created under a system of registration similar to that laid down in the English Statutes already described, and to that followed for a number of special purposes in this country at the present time.[3] The memorandum of association was signed in duplicate before the Registrar of the County, who forwarded one of the copies duly certified to the Provincial Secretary, who in turn issued his certificate of incorporation. Associations formed under that Act, however, were confined to certain classes of objects, enumerated in the Act. These were principally, manufacturing, ship-building, mining, working of quarries, carrying on fisheries, constructing roads, etc., as well as the formation of societies for social, charitable, or educational purposes. In 1864, however, viz.: by the Act, 27-28 Vic. cap. 23, the the system was changed, as regards companies formed for these objects, and the Governor in Council authorized "by Letters Patent, under the Great Seal of the Province, to grant a *charter* of incorporation to any number of persons, not less than five, who should petition therefor; and to constitute such persons and others who might become shareholders in such company, a body corporate and politic," etc. In the following year, however, an Act was passed "to authorize the formation of companies or co-operative asso-

[1] A bank for instance may be created by the government for its own use, but if the stock is owned by private persons it is a private corporation, although it is erected by the sanction of public authority, and its objects and operations partake of a public nature. *Bank of U. S.* v. *Planters' Bank of Georgia*, 9 Wheat 907, and see Angell & Ames, sec. 31. This is perhaps as strong a case as can be put of a private corporation which is to all appearance public.

[2] *Vide* sec. 3 of Act, *post*.

[3] *Vide Statutes of Ontario post*. But by 23 V., c., 31, a system of judicial authorization was attempted and was in force until 1869.

ciations, for the purpose of carrying on in common any trade or business."[1]

This Act was entirely independent of the other, and proceeded on a system of registration similar to that above mentioned. Any seven or more persons who desired to associate themselves for the purpose of carrying on any labor, trade or business, wholesale or retail, (except those mentioned in the previous Act), might do so by signing before a Notary Public, or Justice of the Peace, and filing in the office of the Registrar a certificate to that effect, upon evidence of which, the Provincial Secretary would issue a certificate of incorporation as before. By the Act of 1869, 32-33 Vic. cap. 13, being the first Act passed on this subject by the Parliament of Canada, subsequent to the Confederation of the Provinces, all prior Statutes, with the exception of the one just mentioned, were repealed; and in lieu thereof, it was provided that "The Governor in Council may by letters Patent under the Great Seal, grant a charter to any number of persons not less than five, who shall petition therefor, constituting such persons and others who may become shareholders in the company, thereby created a body corporate and politic *for any purposes or objects to which the legislative authority of the Parliament of Canada extends*[2] except the construction and working of Railways, or the business of Banking, or issue of paper money and insurance.[3]

This Act has since been superseded by the Act of 1877, at present in force.

The Acts passed by the Provincial Legislatures, providing for the formation of Joint Stock Companies, proceed upon much the same system. The application, however, is to the Lieut.-Governor instead of the Governor in Council. Other differences will be noted hereafter.

[1] This Act appear to be still in force, having, as far as can be discovered, never been repealed.

[2] The Confederation Act having divided the legislative authority of the Province between the local and federal legislatures, Joint Stock Companies thereafter became subject to the one or the other, according to the purpose for which their incorporation was to be sought. The questions of *which* and *when*, are discussed *infra*.

[3] These are usually the subjects of special legislation.

CHAPTER II.

PROMOTION OF COMPANY.

1. PROSPECTUS—
   - (*a*) *Form of.*
   - (*b*) *Effect of Misrepresentation in.*
   - (*c*) *Recourse in Damages.*
   - (*d*) *May be Indicted Criminally.*
   - (*e*) *Rule does not include Exaggeration,*
   - (*f*) *Contract not Void but Voidable*
   - (*g*) *Variance between Prospectus and Letters Patent.*
   - (*h*) *Conditions to be observed.*

2. PROMOTERS—
   - (*a*) *Position of.*
   - (*b*) *Secret Profits.*
   - (*c*) *May take Remuneration.*

3. PRELIMINARY EXPENSES—

4. RECOVERY OF DEPOSIT—

1. PROSPECTUS.

(*a*) *Form of.* A common, though not an essential preliminary to the promotion and formation of a company is the issue of a prospectus.[1] This document is intended to set forth to the public such details of the proposed scheme as will enable them to judge of the advisability, or otherwise, of taking part in it. In form it should be short and pointed. It should contain, as a heading, the name and proposed capital of the company, with its advantages and prospects, and an idea of the plan on which it is proposed to be worked. At the end is usually appended a short form of application for shares.[2]

[1] The prospectus is sometimes issued after the company is formed. This plan, indeed, is recommended by some of the best writers, but the more common method is to issue a prospectus and obtain subscriptions before incurring the expense of incorporation.

[2] By the 84th sec. of the Canadian (which is apparently copied from the English) Act, a prospectus must include also the names of the parties to any contract entered into by the company or on its behalf before the issue of the prospectus, *Vide post.*

(*b*) *Effect of misrepresentation in.* The legal effect of such a circular has from time to time been much discussed, especially as regards the subscription of shares on the faith of it. Thus it has been held that a mere signing of the prospectus does not make one liable as a shareholder,[1] and the rule has been broadly laid down that subscriptions induced by wilful misrepresentations in the prospectus or even by wilful concealment of material facts may be set aside as obtained by fraud.

In the *New Brunswick and Canada Railway and Land Company* v. *Muggeridge*,[2] Kindersly, V.C., said, "that those who issue a prospectus setting forth great advantages to accrue to those who will take shares in the undertaking, and inviting them to take shares on the faith of the representations contained, are bound to state everything with strict and scrupulous accuracy; and not only to abstain from stating as facts that which is not so, but to omit from stating no one fact within their knowledge, the existence of which might in any way effect the nature or extent or quality of the privileges and advantages which the prospectus holds out as an inducement to take shares." And, in a mining case, the judgment went so far as to say that a false statement in a prospectus need not be actually known to be false. It is sufficient if the parties issuing it *do not know it to be true*. In the case in question, the directors themselves had been deceived, the mine which they supposed valuable having proved to be worthless. Yet, *held*, nevertheless, that they should have made further inquiry.[3] And, in the same case, Turner, L.J., said: "If it can be shewn that a material representation which is not true is contained in the prospectus, or in any document forming the foundation of the contract between the company and the shareholder, and the shareholder comes within a reasonable time and under proper

[1] *Bourne* v. *Freeth*, 9 B. & C. 632, and even signing a list agreeing to take shares. But see Montreal Cotton Company and Jones, *infra*.

[2] 1 Dr. and Sm., 38.

[3] Per Lord Cairns, in *Reese River Silver Mining Company* v. *Smith*, L. R., 4 H. L., 64, 79.

circumstances and demands to be released from that contract, the Courts are bound to relieve him from it, and to take his name off any list of shareholders or contributories on which it may have been placed."[1] In *Ross* v. *The Estates Investment Company*,[2] the prospectus stated that "More than half the shares constituting the first issue had been subscribed for, and that the company had contracted for the purchase of two estates," etc., the truth being that the chief promoter had agreed to take by himself or his nominees more than half the first issue of shares, but had taken only 200, the rest having been allotted to persons to whom he sold them in the market before allottment, nor had any money been expended in improvement of the estates, as stated in the prospectus, the purchase of one of them only agreed to verbally, the misrepresentation was held sufficient to cancel the contract. And where the prospectus stated that the directors and their friends had subscribed for a large portion of the capital, and were offering to the public the remaining shares; the truth being that the directors had only taken ten paid up shares each, for which they were recouped, 140 only were taken through their influence, and somewhat less than one-half had been taken or agreed to be taken, altogether, held sufficient to void the contract.[3] A prospectus of a Railway Company stated that, "The Engineer's reports, and maps and plans, etc., may be inspected, and further information obtained at the offices of the Company." An applicant for shares, signed the printed form of application, in which, as usual, it was stated that he agreed to be bound by the conditions and regulations contained in the memorandum and articles of association. An examination of all these papers would have afforded him the information, the want of which, he alleged, as a ground for rescinding his contract. Trusting to the representations, he did not examine all, and it was held that his neglect to do so, was no answer to his demand

[1] Buckley. 3rd Ed., p. 86.
[2] 3 Eq. 122, 3 ch. 682; 36 L. J., ch. 54; 37 L. J., ch. 873.
[3] *Henderson* v. *Lacon*, L. R., 5 Eq. 249.

to be relieved from the contract on the ground of there having been misrepresentation of facts.[1]

(*c*) *Recourse in damages.* Nor is the recourse of the party deceived, confined to the rescission of the contract. In *Gerhard* v. *Bates*,[2] a right to damages was clearly laid down. In that case the plaintiff took shares in a company on the faith of a prospectus, which guaranteed to the holders of 1,200 shares a minimum annual dividend of thirty-three per cent. The guarantee failed, and the plaintiff brought damages *against one of the promoters*, on account of the loss incurred by him in consequence. *Held*, that he was entitled to recover.[3] And in *Morgan* v. *Skiddy*, in the United States,[4] *held*, that a director, who knowingly issues or sanctions a prospectus containing false statements in order to deceive and to induce the public to purchase the corporate stock, is liable for the damages sustained by one who, relying upon the statements, makes such a purchase, if the false statements were the principal, though not the sole inducement to purchase. But the mere fact that a trustee allows his name and credit to be used to promote the sale of stock which afterwards turns out to be worthless, without knowledge on his part of any false representation, does not constitute actionable fraud.[5]

(*d*) *May be indicted criminally.* In a recent case of an unusually flagrant character, the court went still further, and laid down the doctrine that the promoters, etc., could be held criminally liable. In 1873, a company was incorporated with a capital of £100,000, in shares of £1 each. The 11th clause of the articles of association provided that if it should appear to the directors that the capital of the company, for the time being subscribed, should be sufficient for the purposes of the company, they might allot

[1] The *Central Railway Company of Venezuela* v. *Kisch*, L. R. 2, H. L. 99; 16 L. T., N. S. 500, Cox; 7th Ed., p. 90.

[2] 2 Ell. & Bl., 476.

[3] Thring, 3rd Ed., p. 30, and see also *Barnard* v. *Bagshaw*, 1 H. and M. 69; *Bale* v. *Cleland*, 4 F. & F. 117; *Collingwood* v. *Berkeley*, 15 C. B., N. S. 145; *Barnes* v. *Cennell*, 2 H. L. 497.

[4] 62 N. Y. 319, App., 1875.

[5] *Ibid.*

any shares which then might remain unallotted, to and among the then shareholders, in proportion to the number of shares respectively held by them, and such shares might be allotted as fully or partially paid up shares, although no moneys might be received by the company in respect of such shares from any allottee thereof. Six weeks after the incorporation of the company, when only 25,000 shares had been allotted, of which nearly 22,000 were allotted as fully paid up shares, pursuant to duly registered contracts, the directors passed a resolution in conformity with the 11th clause of the articles, and thereupon, and by virtue of a duly registered agreement, the remaining 75,000 shares were rateably allotted as fully paid up shares among the then existing shareholders of the company. The concern was then puffed up, and some 50,000 of these paid up shares were sold in the market as shares of £1 each at a premium of which shares brought 100. Subsequently the company, which was a hopeless failure from the outset, went into voluntary liquidation. Nine months afterwards A presented a petition for a compulsory order, alleging (among other things) great irregularities in the formation of the company, and in the conduct of the directors, and that no consideration was given for the 22,000 shares which had been allotted as fully paid up; that the 11th clause of the articles and the proceedings thereunder, were a fraudulent scheme to float the company, and the voluntary winding up was improperly obtained, and under the control of the guilty parties, and was intended to screen them and prevent investigation. *Held*, that if the alleged fraud could be proved, the guilty parties could be indicted for conspiracy.[1]

(*e*) *Rule does not include exaggeration.*—But this rule with regard to misrepresentations, is not held to include every degree of exaggeration.

As stated by Lord Chelmsford, in *Central Railway of Venezuela* v. *Kisch*,[2] every prudent man will make allow-

[1] *Re* The Gold Co. (in app.), 48 Law J. Rep., 281.
[2] L. R., 2 H. L. 13.

ance for the sanguine expectations of the promoters, and accept the prospects held out by them with considerable abatement; and in the same case, it was held by Turner, L. J., that exaggerated views of the advantages of a company, contained in its prospectus, or casual or trifling errors and inaccuracies would not be ground for setting aside a bargain founded upon it.[1] And the misrepresentation to be a ground for avoiding a contract to take shares, must be of fact and not mere conclusions of general opinion.[2]

(*f*) *Contract not void but voidable.*—Another limitation of the general rule which must be borne in mind, is that contracts to take shares in these cases are voidable only, and not *ipso facto* void.[3] And the misrepresentation, to be a ground for avoiding a contract to take shares, must have been an inducement present to the mind of the applicant, when making the application to take shares,[4] the proof of which is on the party making the misrepresentation.[5] But in an action for damages it was held that the burden of proof was on the applicant.[6] Nor would such misrepresentation be a ground for setting aside a contract to purchase shares from a third person.[7]

(*g*) *Variance between Prospectus and Letters Patent.* Again where statements are made in the Prospectus, for the purpose of inducing parties to subscribe for shares, and these statements differ in any material degree from those contained in the memorandum of association (or *semble* the application for Letters Patent) this is a misrepresentation sufficient to void the contract.[8] For example, where the prospectus stated that the object of the company was to cultivate a

[1] 3 De G. & J. 135; 34 L. J., ch. 552.

[2] *The New Brunswick Land and Railway Co.* v. *Conybear*, 31 L. J., ch. 297.

[3] *Oakes* v. *Turquand*, L. R., 2 E. & Ir. 525; 36 L. J., ch. 949.

[4] *The Western Bank of Scotland* v. *Addie*, L. R., 1 Sc. & D. 145.

[5] *Re* Royal British Bank, Nichol's Case, 3 De G. & J. 387.

[6] *Jennings* v. *Broughton*, 5 D. M. & G. 126.

[7] *Re* The Liverpool Borough Bank, *ex p.* Duranty, 28 L. J., ch. 37; 26 Beav. 268; *re* The National Patent Steam Fuel Co., *ex p.* Worth, 4 Drew 529, and *vide post.*

[8] Ship's Case, 2 De G. & S. 544.

particular tea plantation, and the objects expressed in the memorandum were to cultivate tea plantations generally.[1] Where the prospectus stated the company was formed for the purpose of acquiring and extending particular iron-works, and the memorandum extended the objects to ironworks in Russia generally.[2] Where the prospectus stated that the company was formed for the purchase and to carry on the business of a Bank, and the objects expressed in the memorandum extended to the business of bill brokers and general agents, winding up the estates of partnerships and companies, etc.[3] Where the scheme was for a Life Assurance and Loan Company and Sick Benefit Society, and so much of the scheme as related to the sick benefit society was abandoned.[4]

In the United States, where the directors of a turnpike corporation after subscription, but before assessment, procured an Act of the Legislature altering the course of the road to which the defendant had subscribed.[5] Where the defendant had contracted to take a share in a corporation created for the purpose of making the river navigable, and which was empowered to hold real estate not to exceed six acres and to collect a toll for forty years not to exceed six per cent. on the amount of money expended, but which was afterwards authorized by the legislature without the consent of the defendant, to hold real estate to the amount of one hundred acres and to collect toll unlimited as to amount and duration.[6] In each of these cases it was held that the defendant was not bound.

And in Canada where the name of the company was changed from the "Royal Hotel Company" to the Windsor Hotel Company, and the capital had been changed from $600,000 to $500,000, and it was not proved that these changes

[1] Lawrence's Case, 2 ch. 412; 36 L. J., ch. 490.
[2] *Re* the Russian Vyksounsky Iron Works Co., *e.p.* Stewart 1, ch. 575; L. J., ch. 758.
[3] Barned's Banking Co., Peel's Case, 15 W. R. 391.
[4] The Amazon Life Assurance, *e.p.*, 3 Drew, 409.
[5] Angell & Ames, Corporations, sec. 538.
[6] Angell & Ames, Corporations, sec. 539.

had been made previous to the defendants signing the subscription list, he was relieved from liability to calls.[1]

(*h*) *Conditions to be observed.*—But an applicant in order to take advantage of these rules must have observed certain conditions. Thus for instance, he is bound to satisfy himself of the truth of the statements contained in the prospectus, and when the company is formed, how far the prospectus tallies with the memorandum of association by any reasonable means of information he may have.[2] But he is not bound to make diligent examination and search of all the papers and documents connected with the scheme in order to determine the truth or falsity of the prospectus.[3]

The application to avoid the contract also must be made within reasonable delay. In one case, held, that a delay from July 3rd to the beginning of the long vacation was fatal, and in another that a period of two months was.[4]

The right will also be held to be waived by any action on the part of the owner from which acquiescence may be implied. Thus an offer to sell, an acceptance of dividends, an attendance at meetings, the payment of calls, are acts from which acquiescence will be implied; and even if done before knowledge of the fraud, will be taken into consideration in determining whether the subscription should be set aside.[5]

The right is also forfeited if a winding-up takes place before proceedings are had to set aside the contract.[6]

2. Promoters.

(*a*) *Position of.* This liability for the statements contained in the prospectus brings us to the question—what is the

[1] *Windsor Hotel Co.* v. *Laframboise*, 22 L. C. Jur. 144.

[2] *Hallows* v. *Fernie*, L. R., 3 ch., 477.

[3] *The Central Railway Co. of Venezuela* v. *Kisch*, L. R., 3 E. & Ir. 99; 36 L. J., ch. 849, and *Langham* v. *the East Wheal Bore Mining Co.*, 37 L. J., ch. 253.

[4] *Ogilvy* v. *Currie*, 37 L. J., ch. 541, and Taite's Case, L. R., 3 Eq. 795; 36 L. J., ch. 475.

[5] The Hop and Malt Exchange Warehouse Co., *e.p.* Briggs, L. R., 1 Eq. 483; 35 L. J., ch. 320; the Athenæum Life Assurance Co., *e.p.* Sheffield, 437; 28 L. J., ch. 325; *Kent* v. *the Freehold Land and Brickmaking Co.*, L. R., 4 Eq. 588; *Windsor Hotel Co.* v. *Murphy*, 1 Leg. News. Mon. 74.

[6] *Oakes* v. *Turquand*, L. R., 2 E. & Ir. 325; 36 L. J., ch. 919; *Stone* v. *the City and County Bank*, 3 C. P. D. 252.

position occupied by promoters in a general way? This question has been the subject of much discussion, particularly of late years. A promoter has been said to be one who undertakes to form a company with reference to a given object and to set it going, and who takes the necessary steps to accomplish his purpose.[1]

But though several persons may be associated as promoters, and may work together for the common object, they are not partners and are not liable for each other's acts, and contracts as such. This rule has been well established in a number of English cases,[2] and, so strictly has it been construed, that they have been held not to be liable to each other for expenses incurred for the attainment of the common object, where they have not otherwise undertaken to contribute.[3] From this, it follows that they are not the agents of each other, and do not bind one another, nor are the subscribers of shares in a company, not yet formed, liable for the acts of the managers, and others actively interested in it.[4] It has been held, nevertheless, that a general authority conferred by a promoter on the others co-operating in the enterprise, sufficient to make him liable for their acts, might be inferred from public announcements, and that a special authority for each act was by no means necessary to render him liable for it.[5] But if a promoter makes all the others *jointly* his agents, he is not bound by the acts of any less number than all.[6]

And if not agents of each other, still less are promoters agents of the company whose formation they are engaged

[1] *Twycross* v. *Grant*, 2 C. P. Div. 541.

[2] *Reynell* v. *Lewis*, 15 M. & W. 517. *Wyld* v. *Hopkins*, 15 M. & W. 517; *Bright* v. *Hutton*, 3 H. L. Ca. 368; *Hutton* v. *Thompson*, 3 H. L. Ca. 161.

[3] *Holmes* v. *Higgins*, 1 B. & C. 74; *Goddart* v. *Hodges*, 1 Cr. & M. 33; *Watson* v. *Curson*, 15 M. & W. 532; *Parkin* v. *Fry*, 2 C. & P. 311.

[4] *Bourne* v. *Freeth*, 9 B. & C. 632, E. C. L. R. 17; *Dickenson* v. *Valpy*, 10 B. & C. 128, E. C. L. R. 21; *Fox* v. *Clifton*, 6 Bing. 776, E. C. L. R., 19, and 9 Bing. 115, E. C. L. R. 23.

[5] *Barnett* v. *Lambert*, 15 M. & W. 489; *Higgins* v. *Hopkins*, 3 Ex. 163; *Lake* v. *Argyll*, 6 Q. B. 477, E. C. L. R. 51, and Maitland's Case, 4 De G. M. & G. 769.

[6] *Brown* v. *Andrews*, 13 Jur., 938, Q. B.

in promoting. Although they may become members of the company, when formed, the shareholders as a body have no connection with them, nor are they responsible in any way for their acts.

The case of Brewster and Chapman,[1] decided in the Queen's Bench, in Lower Canada, was a case in point. In that case, a company, during the time it was being incorporated, gave promissory notes for goods purchased, which notes, after the incorporation of the company, were renewed by the notes of the regularly constituted company, and the old ones given up and surrendered. *Held*, that in the absence of fraud in effecting the exchange of the notes, the shareholders who had paid up their stock in full, and caused the same to be registered, were free from all liability to pay said notes, or the original indebtedness of the goods. And, in the United States, *held*, that where there is no proof of acceptance by the corporation, services rendered and expenses incurred therefor before its registration will be presumed to have been gratuitous and in view of the general good or private benefit expected to result from the object of the incorporation.[2]

For all contracts entered into by them, whether entered into ostensibly on behalf of the company or not, the promoters themselves only are liable. Indeed, it has been said that a company cannot even ratify agreements made on its behalf before it legally existed, so as to make itself liable for them.[3] And this seems reasonable, as a contract which cannot legally be entered into, or, in other words, which has no legal existence or effect, cannot be validated

[1] 19 L. C. Jur. 301.

[2] *Rockford & R. R. Co.* v. *Sage*, 65 Ill. 328, Su. Ct., 1872, Abb. Dig., Vol. II.

[3] Willes, J., *in Scott* v. *Lord Ebury*, L. R., 2 C. P. 255. In that case, the learned Judge said: "Putting out of view the cases of assignees of bankrupts and administrators, there is no case in which a person can, by a subsequent certification, make himself liable as principal, so as to discharge the agent, where the principal was not in existence at the time of the original contract."

by ratification. The only way in which it can be transferred to the company is by a new agreement.

And in the United States, *held*, that to render a corporation liable for the debts of a partnership company of the same name, such debts having been incurred before the corporation was chartered, a subsequent parol promise of the president or agent is not sufficient. Such promise to be valid must be in writing, and it must be shewn there that he is expressly authorized, or that the corporation had received the consideration.[1]

And in *The National Insurance Company v. Hatton*, in the Province of Quebec, held that an agreement between a promoter of a company and a subscriber for shares, that the latter shall pay for his stock in services, will not bind the company.

The usual practice now is to provide for such cases by stipulations or provisions to that effect in the Act of Parliament or articles of association. Indeed, both by the Imperial Act, 1867, before referred to, and the present Act,[3] it is made absolute law that every prospectus or notice inviting people to take shares in a company, shall be deemed fraudulent on the part of the promotors, directors, etc., knowingly issuing the same; as regards any person taking shares in the company on the faith of such prospectus, unless it specifies the dates and the names of the parties to any contract entered into by the company or the promoters, directors, etc., before the issue of such prospectus or notice, whether subject to adoption by the directors or otherwise; or unless the person taking shares has notice of the contract.

But though a company cannot be held liable in law for contracts entered into by its promoters, it has been held to be liable in equity, and in one case, the Court carried the doctrine so far as to restrain the company from reaping the benefit of a contract made by its promoters, without performing the stipulations agreed to by them.[4]

[1] *Georgia Co.* v. *Castleberry*, 43 Ga. 187, Su. Ct., 1871; Abb. Dig., Vol. II.
[2] (In App.), 24 L. C. Jur. 26.
[3] *Vide* sec. 84, *post*.
[4] *Edwards* v. *Grand Junction Railway Co.*, 1 M. & Cr. 650.

And, in the United States, *held*, that the fact that when articles purchased for the use of a Joint Stock Association were first ordered, the credit was given not to the association but to an individual, will not prevent the association from being held liable, if the articles are received and used by its agents, in its work or business; but, as such liability arises out of the fact that the association was the real party to whom the goods were furnished, it continues only so long as the association continues to sustain that relation to the business in which the debt was contracted.[1]

And the case of *Spillen* v. *Paris Skating Rink Company*,[2] also would seem to be in contradiction of the doctrine above stated. In that case, a contract was made Oct. 25, 1875, between the plaintiff and the promoters of a proposed company. Dec. 16, 1875, the company came duly into existence, and subsequently ratified the contract and acted on it, on which it was held that the company was liable on the contract. The ratification, however, would appear to have been in the nature of a new contract.

The relation of the promoters to the company ultimately formed, which was for some time, a matter of doubt, is now well settled by a number of leading cases to be that of trustees.[3] In the *New Sombrero Company* v. *Erlanger*, it was said "the case of a promoter seems an exceptionally strong case of fiduciary relationship, inasmuch as the trustee or agent, so far from being selected by his *cestui que trust* or principal, here actually creates the principal in whose affairs he acts. And as such trustees it would appear that they are not without liability.

Thus, after the formation they can be held to account concerning acts or contracts entered into or undertaken for the ostensible benefit of the company. For example, they

[1] *Allen* v. *Clark*, 65 Barb. 563, Su. Ct., N. Y., 1873; Abb. Dig., Vol. II.

[2] 7 Ch. D. 368.

[3] *The New Sombrero Co.* v. *Erlanger*, 5 C. P. Div. 73, 112, 118 and 123, 3 App. Cases, 1218, and *Bagnall* v. *Carlton*, 6 Ch. D. 381.

may be held to account concerning purchases made for the purposes of the company, nor will they be allowed to make a personal profit on such transactions at the company's expense.[1] But a promoter may validly sell to the company, property already belonging to him,[2] so that the onus would appear to be on the company, to shew that the property was purchased by the promoter for the use and benefits of the company.

But, *in re* The West Jewell Tin Mining Company, Weston's case,[3] it was held, that when any person standing in a fiduciary relation to a company, is charged with a misfeasance and a *prima facie* case is raised against him, the onus is on him, to shew the *bona fides* of the transaction.

In *Bagnall* v. *Carlton*,[4] it was held that persons who, for any assistance which they may render, agree to receive money out of the secret profits, which other persons, standing in the position of trustees for the company, are going to put into their own pockets, are themselves in a fiduciary relation to the company, and answerable as trustees to refund any profits so made by them, at the expense of the company.

In the *Emma Silver Mining Company* v. *Lewis*, recently decided in England the defendants were metal brokers, who had been selling the ore of the mine on commission, and who promised to assist the proprietor in making sale of the mine, which they acknowledged in their correspondence, would have to be done by means of a company. A company was eventually formed and the mine sold; but beyond giving information, regarding the produce of the mine, the defendants had nothing to with the formation of the company, nor indeed was the company formed at all by the persons to whom they had referred the vendor, but

[1] *Kent* v. *Freehold Land and Brickmaking Co.*, L. R., 4 Eq. 588; *Hickens* v. *Congreve*, 1 R. & My. 150 and 4 Russ. 562; *Beck* v. *Kantowicz*, 3 K. & J. 230, McElhenny's App. 61, Pa. 188, Su. Ct., 1869.

[2] Paul & Beresford's Case, 33 Beav. 204, 210; and *Foss* v. *Harbottle*, 2 Hare 461, 489.

[3] 48 Law, J. Rep., (App.) 425.

[4] 48 Law J. Rep. 257.

by others with whom they had nothing whatever to do. They did not even know that a company had been formed until they saw the prospectus in the *Times* newspaper, in which, however, their own names were included. But the vendor had promised them, on a sale being effected, the sum of £5000, in shares of the company, in consideration of their trouble and of the loss of commission which would necessarily ensue to them on the sale of the ore. The £5000 was to be included in the sale-price of the mine, or in other words, was to come out of the secret profit which the vendor was to make on the transaction, and at the company's expense. The question being left to the jury as a question of fact, they found that the £5000 being part of the secret profit made by the vendor, and having been paid to the defendants, partly in consideration of their services in the sale of the property, that they must be regarded as promoters, and as having received the £5000 in trust, and for the use of the company, and were bound to restore it, together with the dividends, interest, etc., which they had received thereon.[1]

In that case, the vendor was a promoter of the company, and when it was formed, one of the principal shareholders; but where a party cannot be shewn to have any connection with the company, there is nothing to prevent his purchasing property and selling it to them at any profit he can induce them to pay, always of course, subject to the ordinary rules concerning fraud. This was laid down in *Lindsay Petroleum Company* v. *Hurd*,[2] but stated at the same time, that if it be once shewn that the vendors to the company were promoters of the company, that they, in fact created their own purchaser, the transaction would be set aside at the suit of the company. And in another case, held that a commission received by an agent or trustee of a

[1] This decision leaves the question of, who is a promoter, a very open and unsatisfactory one; a question to be decided by the facts of each particular case which may arise, and will have a tendency to frighten the public from having anything to do not only with the formation of companies, but with parties promoting their formation.

[2] L. R., 5 P. C. 221.

purchaser from a vendor without the knowledge of his principal, is, in a court of equity, a bribe; it is a profit which the principal has a right to extract from the agent whenever it comes to his knowledge.[1]

This rule has been still more recently established by the judgment in *Whaley Bridge Calico Printing Co.* v. *Green & Smith.*[2] In that case, the facts were that in May 1876, the defendant Green, purchased certain chemical works for £15,000. The defendant Smith, became associated with Green in negotiations for the working or re-sale of the works, and in October they succeeded in procuring the incorporation of the plaintiff company, all the directors of which were nominated by the defendants for the purpose of purchasing the works. In February 1877, the works were conveyed to the company by Green for £20,000, the company being induced to give this sum in consequence of an alleged contract of sale, which the jury found to be a sham and by which Green sold the works to Smith for £20,000. At the time of the incorporation of the company, there was a secret agreement existing between Green and Smith, that Green should pay to Smith, £3,000 of the £20,000 purchase money paid by the company. Of this agreement the company were not aware. *Held*, that Smith having been a promoter of the company, and having concealed the fact of this agreement from the company, the company were entitled to treat the agreement as made by him on their behalf, and to recover from Green the balance of the £3,000 still unpaid to Smith.

(*c*) *May take Remuneration.*—The rule, however, does not prevent that the trustee or promoter should receive, and be entitled to receive, a fair remuneration for his services in the organization of the company; and even where the promoters together with the financial agent and solicitors, were sued to recover a large amount taken by them as secret profits and they were condemned to refund, it was held at

[1] *Phosphates Sewage Co.* v. *Hartmont*, 5 ch. div. 394, 457, and Leg. News, Mon. Vol. I., p. 9.

[2] 28 W. R. 351.

the same time, that they were entitled to their expenses fairly incurred in bringing out the company and to a fair commission.[1]

But where the promoter had used fraudulent means and the company proved abortive, he was not allowed to recover anything for his services, either before or after registration.[2]

The liability of a promoter on shares improperly accepted by him as a present for services, will be treated of in connection with the liability of shareholders generally.

3. Preliminary Expenses.

The expenses necessarily incurred in the promotion of the company, are however, usually paid by the company on its formation. An undertaking to do this is, as a rule, embodied in the Act, or Articles of Association, under which the company is formed. The Imperial Companies clauses Act, renders companies governed by it, liable for the expenses of obtaining their special Act, and they can be sued to recover such expenses.[3] But in no other way can the shareholders of a company (as such), either individually or collectively, be held liable for expenses incurred in promotion.[4] And therefore, when an undertaking fails or falls through before incorporation, and consequently before any undertaking is entered into by the company to pay preliminary expenses, deposits made on share subscriptions cannot be assessed in payment of such expenses.[5] Thus, where a person had applied for shares in a projected Railway Company, and had agreed to sign the parliamentary contract and subscribers agreement, it was held that she was entitled to recover back the whole of the deposits paid in respect of the shares allotted her, it being proved that the formation of the company had been abandoned.

But where the subscriber had signed a deed authorizing the promoters to defray the expenses incidental to

[1] *Bagnall* v. *Carlton*, 6 ch. div. 371.
[2] Hereford Waggon Co., 2 ch. div. 621, 626.
[3] The Canadian Acts make no reference to these preliminary question.
[4] *Marchand* v. *Loan, etc., Association*' 26 La. Ann. 389, Su. Ct., 1874.
[5] *Nockels* v. *Crosby*, 3 B. & C. 814; E. C. L. R. 10.

the undertaking out of the deposits paid for shares, it was decided that, although the scheme proved abortive, the deposits were not returnable.[1] And the result of a number of cases of a similar character is, that there must be something to shew an undertaking that deposits on shares were to be liable for expenses, in order to hold them when the scheme is abandoned.

And so, in *Gilpin* v. *Greene*, in Upper Canada,[2] *held*, that a party contributing to a Mining Joint Stock adventure which does not go into effect, may recover back his money had and received, but the court must see that the circumstances gave him a just right.

Neither can one promoter charge a fellow promoter with these expenses unless he is willing that an account should be taken of the expenses incurred by all of the promoters.[3] And even where the defendant authorized the insertion of his name as a director and suggested alterations in the prospectus when it was sent to him, it was held that he was in no way liable for the cost of advertising ordered by the embryo company.[4]

Where the formation of the company is completed, the expenses may be undertaken to be paid by the company in instalments spread over a number of years and dividends be paid in the meanwhile.[5]

4. Recovery of Deposit.

This question of liability for the preliminiary expenses of the company is akin to the general one of the right of the shareholders to get back their deposits, where the for-

[1] *Garwood* v. *Ede*, 1 Ex. 264, and a number of other cases.

[2] 7 Q. B. 586; Robinson's Dig. 785.

[3] *Denton* v. *Macneil*, Law Rep., 2 Eq. 352.

[4] *Burbidge* v. *Morris*, 34 L. J. 131 ex.; 12 L. T. N. S. 426; *Maddick* v. *Marshall*, 17 C. B. N. S. 820.

[5] *Bale* v. *Cleland*, 4 Fos. & F. 117, 144.

mation is not completed and the scheme falls through, and the general rule is, deducible from a number of cases,[1] that in the absence of any contract or agreement to the contrary the shareholders have, on the abandonment of the undertaking, a right to recover the amounts paid by them as deposits on shares. And this even when the money has been expended by the managing committee, who must return to each subscriber the amount of his deposit without any deduction.[2]

But when the promoters of a company issued a prospectus stating that deposits would be returned if no allotment of shares was made, and several deposits were made but no allotment took place, it was held that this statement did not bind moneys consisting mainly of these deposits, standing in a bank to the credit of the company, with a trust or lien in favour of depositors as against creditors of the company, and demurrer was allowed to a bill by depositors seeking to restrain creditors from attaching the moneys under a garnishee order.[3] And, in *Hayes* v. *Stirling*,[4] which was an action for money had and received against a person named as director of a projected company by a proposed subscriber, for his deposit, it was held necessary to shew that the money was placed in the defendant's hands for the purpose of being applied to the objects of the projected company, and that the project failed by reason of the fact that no company, or no company conformable to the prospectus, was formed. And in another case held that the right to recover deposits made in an abortive company is a personal right of action and not a charge on any particular fund.[5]

[1] *Green* v. *Barrett*, 1 Sim. 45; *Colt* v. *Wolaston*, 2 P. W. 154; *Johnson* v. *Goslett*, 18 C. B. 728; *Nockell* v. *Crosby*, 3 B. & C. 814; *Ward* v. *Londesborough*, 12 C. B. 252; *Wouter* v. *Shairp*, 17 L. J. C. P. 38; 4 C. B. 404.

[2] Thring, Joint Stock Companies, p. 34.

[3] *Moseley* v. *Cressey's Company*, Law Rep., 1 Eq. 405, 12 Jur. N. S. 46.

[4] 14 Ir. Com. Law Rep. 277.

[5] *Grant* v. *North of England Railway Company*, *e.p.* Caruch, 20 L. J., ch. 670.

And in such action it is necessary to set up that the scheme is abortive.[1] But the difficulty in this respect is now usually avoided by a statement in the form of a letter of application authorizing the deposit to be applied to the payment of the preliminary expenses of the company.[2]

[1] *Hayes* v. *Stirling*, 14 Ir. C. L. R. 277.

[2] A short form given by Thring is as follows: Gentlemen,—Having paid to your banker the sum of $——, I request you to allot me—shares in the—company, and I agree to accept the same or any less number that you may allot me (subject to the articles of association), and I authorize you to apply the deposit of —— in the payment of the preliminary expenses of the company.

CHAPTER III.

FORMATION AND INCORPORATION OF COMPANIES.

1. CITATION.
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   (*c*) *"A Body Corporate and Politic"*
   (*d*) *Purposes or Objects.*
4. NATURE OF APPLICATION.
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   (*c*) *Purposes or Objects.*
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12. SUPPLEMENTARY LETTERS PATENT.
13. LETTERS PATENT TO BE SUBJECT TO ACT.

An Act to amend the law respecting the Incorporation of Joint Stock Companies by Letters Patent.

[*Assented to 28th April, 1877.*]

HER Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

1—CITATION.

1. This may be cited as "*The Canada Joint Stock Companies' Act*, 1877."

2—INTERPRETATION OF ACT.

2. The following expressions in this Act, and in all letters patent and supplementary letters patent issued under the same, shall have the meaning hereby assigned to them respectively, unless there is something in the subject or context repugnant to such construction, that is to say:—

1. The expression "the Company," means the Company so incorporated by letters patent;

2. The expression "the undertaking," means the business of every kind which the Company is authorized to carry on;

3. The expression "Loan Company," means a Company chartered for any of the purposes to which the powers of Loan Companies extend, as hereinafter provided;

4. The expression "real estate," or "land," includes messuages, lands, tenements and hereditaments of any tenure, and all immoveable property of every kind;

5. The expression "shareholder," means every subscriber to or holder of stock in the Company, and includes the personal representatives of the shareholder;

6. The word "Manager" includes the Cashier, and Secretary.

3—HOW INCORPORATED.

3. The Governor in Council may, by letters patent under the great seal, grant a charter to any number of persons, not less than five, who shall petition therefor, constituting such persons, and others who may become shareholders in the Company thereby created, a body corporate and politic, for any of the purposes or objects to which the legislative authority of the Parliament of Canada extends, except the construction and working of railways, or the business of banking and the issue of paper money, or insurance.[1]

(*a*) *By Letters Patent.* It has been already pointed out[2] that the legislature of this country, after a trial of the registration system, such as is followed in England and the United States as well as in France, and other European countries, has returned to the more elaborate and formal method of issuing letters patent under the great seal. The object of this is, perhaps, to avoid a too great facility of incorporation, which has been found in all countries to have its

[1] The English Act commences by prohibiting the formation of companies of more than ten persons for banking purposes, unless they are incorporated under the general statute or in some other way, and of companies of more than twenty persons for any other purpose of gain: Act (Imp.) 1862 sec. 4.

[2] *Vide supra p.* 61.

drawbacks as well as its advantages. The effect of the difference in method is to bring any proposed Joint Stock scheme, for which incorporation is sought, more directly under the scrutiny of the authorities, and to give to the Governor in Council an opportunity of refusing incorporation, should it seem to him expedient so to do.

(*b*) *Number of Persons.* The minimum number of persons by all the principal Canadian Acts is five: by the English Act, seven; by the code of California, five, but in many of the States no minimum limit appears to be fixed.

(*c*) "*A Body Corporate and Politic.*" These are the same terms as are used with regard to the franchise of any other corporation, and are intended to convey full corporate powers and privileges in so far, at least, as they are not restricted by the company's charter, and the provisions of this Act.[1]

(*d*) "*Purposes or Objects.*" The division of legislative authority in matters of incorporation between the federal and local legislatures, by the Act of Confederation, makes the definition of the "purposes or objects," to which this Act and the legislative authority of the Parliament of Canada extends, a matter of difficulty. Nor was it long after the consummation of Confederation before this difficulty made itself apparent. At the very first session of the Dominion Parliament, we learn from a Parliamentary writer,[2] the question arose on a number of applications. But to understand the grounds of the decisions arrived at in these and subsequent cases, it will be necessary to refer to the clauses of the Confederation Act, by which the division of authority is made. By the 92nd section of that Act, it is provided that:—

In each Province the legislature may exclusively make laws in relation to matters coming within the classes of subjects, next hereinafter enumerated, that is to say:—

Sub-sec. 10. Local works and undertakings other than such as are of the following classes:

[1] *Vide supra p* 52.

[2] Todd, Private Bill Practice, chap. 3.

(*a*) Lines of steam or other ships, railways, canals, telegraphs, and other works and undertakings, connecting the Province with any other or others of the Provinces, or extending beyond the limits of the Province;

(*b*) Lines of steamships between the Province and any British or foreign country;

(*c*) Such works as although wholly situate within the Province are before or after their execution declared by the Parliament of Canada to be for the general advantage of Canada, or for the advantage of two or more of the Provinces.

Sub-sec. 11. The incorporation of companies with provincial objects.

Sub-sec. 16. Generally all matters of a merely local or private nature in the Province.

The terms here employed, though indicating, perhaps, as well as can be done in an Act of Parliament, the matters which come within the purview of the Dominion and Local Legislatures respectively, have perhaps unavoidably left a great deal to future judgment and decision—to the merits of each particular case which may arise. Clause (*c*), of the exceptions above enumerated, is especially vague, and this vagueness the legislature has sought to overcome by throwing upon the Parliament of Canada the duty of saying whether such and such an enterprise, either projected or completed, is "for the general advantage of Canada, or for the advantage of two or more of the Provinces." If it is, it is within the authority and jurisdiction of the Parliament of Canada. Cases in point were two of those brought before the first session of the Dominion Parliament. One was a bill to incorporate the proprietors of the Ottawa and Prescott Railway, by the name of "The St. Lawrence & Ottawa Railway Company," which contained a provision empowering the company to build a bridge over the River Ottawa, and to construct a branch to Lake Deschenes, in the Province of Quebec. It was argued, however, that this would not in itself justify legislation by the

Dominion Parliament, in reference to a Railway situate wholly within one Province, as it might afford a dangerous precedent to parties desirous of evading the jurisdiction of the local legislatures, over works of a purely local character. The difficulty, however, was surmounted by introducing a clause in the bill declaring that the railway therein referred to was, "a work for the general advantage of Canada."[1] The other case was a bill concerning the Northern Railway of Canada in which the same difficulty was overcome in the same way.

The Bills, therefore, were passed under authority of clause (*c*) above recited.

Under clause (*a*) also, several cases arose in the same Session, and several Bills were passed concerning companies whose operations lead directly into the United States. Of these were a Bill "To confirm a by-law passed by the directors of the Lake Memphremagog Navigation Company (whose steamers ply on a lake partly within the territory of the United States). To incorporate the Clifton Suspension Bridge Company, (international). And to authorize the carrying of gas-pipes across the river Niagara, in order to facilitate the lighting of the town of Clifton with gas, (international)."[2]

Under clause (*b*) no doubt appears to have arisen, nor does there appear any likelihood of difficulty concerning the interpretation of it, so that the question may be narrowed down to clauses (*a*) and (*c*), instances of which have just been given, and sub-section 11: "The incorporation of companies with Provincial objects."

What is a company with Provincial objects? that is, must the objects of the company be *exclusively* Provincial? or may it, under a charter from the Local Government, be authorized to transact business throughout the Dominion?

[1] Todd, Private Bill Practice, 3rd Ed., p. 15.

[2] Todd, Private Bill Practice, 3rd Ed., p. 17. See also *European and Northern American Railway Co.* v. *Thomas*; Stevens' Dig. N. B. Rep., p. 762.

These are the principal questions which arise under this head, and about which we are concerned at present. Several instances of this class of cases also arose during the first session of the Parliament of the Dominion. Two were petitions for the incorporation of the Gore District Mutual Fire Insurance Company, and of the Sorghum Growers Association of the County of Essex.

The Committee, in each case, reported that, in their opinion, the matter came more properly within the jurisdiction of the Local Legislature of Ontario." On the other hand, petitions for the incorporation of the Merchant's Express Company of the Dominion of Canada, for the incorporation of the Canadian Lake Underwriters' Association, and for amending the Acts relating to the Canada West Farmers' Mutual and Stock Insurance Company, were reported upon favourably, and Bills introduced upon them were passed, and became law.[1] The reason of the different conclusions in these different cases is not, however, stated, and we can only infer that they proceeded upon differences in the circumstances of each case, and which pointed to the two first enterprises as of a more exclusively local character than the others which were more fortunate. This idea is supported by the discussion which took place on a petition to incorporate the Intercolonial Insurance Company, in which it was urged, on the part of the promoters, that the Company was desirous of transacting business in different parts of the Dominion, and were, therefore, in need of more extensive and general powers than could be conferred upon them by a Provincial Legislature, referring in support of their position to the case of the *Bank of Montreal* v. *Bethune*, in which it was *held*, that a foreign corporation, such as a bank, cannot maintain an action upon promissory notes received and discounted by them in the course of banking business in this Province, although they may maintain an action for money had and received to their use against the person for whom such notes were

[1] Todd, Private Bill Practice, 3rd Ed., p. 18.

discounted and to whom money was advanced upon them.[1] But the almost universal practice now is to admit companies created in a different jurisdiction to the same rights, as regards contracts and their remedies upon them, as those created in the same jurisdiction.[2] A good deal of confusion seems to be created by different writers on this subject, between the *rights* enjoyed by a company in a foreign state, and the *powers* conferred upon it by its parent state.

Thus the Dominion Parliament may grant a charter to a company, authorizing it to do business, within the purposes of its organization, anywhere in the Dominion; but it would be for the Provinces to say whether they will admit it to such privileges or enable it to enforce such contracts as it may enter into.[3]

It may even authorize such company to carry on business in foreign jurisdictions, subject to the same conditions,[4] but the Local Legislature can confer no power upon a company outside of its own limits, or in other words, have not the power themselves to grant charters to companies whose purposes extend beyond their own jurisdiction. And, *e converso*, the Dominion Parliament has not the power to grant charters to companies whose purposes are purely provincial.

A case in point was that of the Stratford Board of Trade. "The Bill was referred to the Committee on Banking and Commerce, and the question of jurisdiction being raised in committee, the committee came to the conclusion that though the Board to be created was a local Board, the terms of the 91st sec. of the British North America Act in placing "the regulation of Trade and Commerce" under the control of Parliament, justified the action of the Legislature in the matter. In examining the details of the Bill, however, it was found to contain provi-

[1] Todd, Private Bill Practice, 3rd Ed., p. 20, et. seq.

[2] *Vide post.*

[3] *Vide post.*

[4] Compare sec. 86 of the present Act by which companies formed under it are authorized to do business anywhere in the United Kingdom; *post.*

sions for the establishment of a court of arbitration in commercial matters; and as the constitution and maintenance of Provincial courts, both of civil and criminal jurisdiction," are, by the 92nd section of the said Acts, assigned exclusively to the Provincial Legislatures, the committee expunged from the Bill so much as related to a court of arbitration, and it was passed in the amended form.[1]

Coming, however, down to a later period, we find the question transferred from the Legislature to the Courts, and receiving a variety of interpretations on a variety of points. The principal, and at the same time, the most difficult of these is, as to the right of the Local Legislature, by virtue of clause 13, of sec. 72 of the British North America Act, to deal with the property of corporations and companies incorporated by or under the control of the Dominion Government.

A leading case was that of the Union St. Jacques, and Belisle. In that case, the defendants, a Friendly Society, had been established at Montreal, before Confederation, by charitably disposed persons, with the object of aiding its members in cases of sickness, and the ensuring of like assistance to the widows and children of deceased members. After Confederation, its members applied to the Provincial Legislature and obtained an Act of incorporation for the Society, under its original name and formation, and for its original purpose. The diminished resources of the Society preventing the continuance to its beneficiaries of their other allowances, and amongst them those of the four widows borne upon the funds of the establishment, the Society proposed to them to convert their allowances into a fixed sum of $200, to be once paid to each to them, with the right to receive their full allowance, if thereafter the assets of the Society should reach ten thousand dollars. The proposition

[1] Todd, Private Bill Practice, 3rd Ed., p. 26. The decision of the committee in this case seems to be exposed to criticism on both points, as a question of incorporating local boards of trade can scarcely be called a question of trade, nor can a board of arbitration be called a judicial tribunal or brought within the meaning of the terms of the section alluded to in the text.

was at once accepted by two of them and, upon the refusal of the others, the Provincial Legislature of Quebec, upon the application of the Society, passed the Act, 33 Vic. cap. 58, which gave effect to the proposition made to the widows. The plaintiff, one of them, thereupon instituted an action against the Society, for her weekly allowances, to which the Society pleaded the Provincial Act, in bar of the action. This was in 1870, and in November of that year, Torrance, J., overruled the plea, on the ground that the Society was insolvent, and that the Act of the Provincial Legislature was an interference with matters in insolvency, which by the British North America Act, were confined exclusively to the jurisdiction of the Dominion Parliament. This view of the matter was also taken by the Court of Appeal (Badgeley and Caron, J. J., dissenting) and the judgment was affirmed. The Society, however, carried it to the Privy Council, and there obtained a complete reversal of the judgments of the Circuit Court and Court of Appeal, on the grounds stated by Badgeley, J., in his dissent, viz.: that the circumstances disclosed, and the application by the Society for the Act in question did not necessarily prove them insolvent; that the terms of the Imperial Act "Bankruptcy and Insolvency" apply to *general laws*, governing those subjects, and that no such general law existed as would cover the association in question; and that the question was one purely of a local and private character, such as is mentioned by sub-section 16 of section 92, of the Imperial Act, and with which the Local Legislature was entirely competent to deal.

In Leprohon v. *The Corporation of the City of Ottawa*[1] also, the meaning of the terms of the 13th sub-section of the 92nd section of the Imperial Act "Property and civil rights in the Province," was discussed. The whole wording of the provision, it will be remembered, is "In each Province the Legislature may exclusively make laws in relation to * * property and civil rights in the Province," and the question has arisen, does not this give to each Province supreme

[1] 2 Tupper, App. 522.

control over all property of every kind and description within its limits? But in *Leprohon* v. *The City of Ottawa*, the powers conferred upon the Local Legislature by this clause, were not allowed to override those of the Dominion Parliament conferred by other provisions of the same Act. In that case action was brought by plaintiff, an officer of the House of Commons, against the municipality of the City of Ottawa, and the question raised was whether the Provincial Legislature has power to impose a tax upon the official income of an officer of the Dominion Government, or to authorize the Municipalities to do so? It was argued, that the salary of a person residing in the Province being once fixed, was property within the Province and as such subject to taxation. On the other hand, it was contended that to admit such a power would be to derogate, by reducing the salaries of such persons, from the power conferred upon the Dominion Parliament by sub-section 8 of section 9, which gives exclusive Legislative authority to the Dominion Parliament in all matters relating to the fixing of and providing for the salaries and allowances of civil and other officers of the Dominion Government. In appeal this view was maintained, and the right of the Local Legislature to tax the salaries of officers of the Dominion Parliament disallowed.

In *Evans* v. *Hudon*,[1] decided in Montreal in 1877, a similar point was raised, viz.: whether it was within the power of the Local Legislature under the clause of the British North America Act giving the control of property and civil rights within its limits, to pass an Act making the salaries of officers of the Dominion Government liable to seizure for debt. *Held*, by Rainville, J., sitting in the Superior court, that the Local Legislature had no such power.

Very similar in effect with regard, at least, to the point in question, is the judgment just rendered by the Privy Council in Bourgouin and The Montreal, Ottawa & Occi-

[1] 22 L. C. Jur. 268.

dental Railway Company.[1] In that case the company, described in the deed as a body politic and corporate duly incorporated by statutes of the Province of Quebec, and of the Dominion of Canada, sold and conveyed for certain consideration, all its right, title and interest in the uncompleted railway, which had in course of construction become a federal work, with all its appurtenances, and all the property, liabilities, rights and powers of the existing company to the Quebec government. The appellants, under a judgment against the company, seized its plant, etc., and were estopped from selling by an opposition, filed by the Attorney-General of the Province of Quebec, by which he claimed the whole of the property seized as the property of the Queen, for the use of the Province of Quebec. The appellants contested, on the ground that the transfer was invalid, and altogether inoperative to affect the obligations of the company. "They insist," said their Lordships, in delivering the judgment of the court, "that, by the general law, and by reason of the special legislation which governed it, the company was incompetent thus to dissolve itself, to abandon its undertaking, and to transfer that, and its own property, liabilities, powers and rights to another body without the sanction of an Act of a competent legislature, and further, that the Legislature of Quebec was incompetent to give such sanction. This contention appears to their Lordships well founded."

The same points arose, though in a more complicated form, in what is known throughout this country as the Presbyterian Church Case. In that case, several different bodies of Presbyterians in Canada decided, in June 1875, by a large majority of the delegates present, to form one United body under the name of "The Presbyterian Church in Canada." To this end application was made almost simultaneously to the Legislatures of Quebec and Ontario for authority to give effect to this decision, and to enable the new body to deal with the property of the churches so united. These

[1] L. C. News, Mon. 187.

churches had not previously been incorporated by any Statute or Charter, but when their share of the land known as the Clergy Reserve became fixed, an Act of the Legislature of United Canada (22 Vic. cap. 66) was passed to make provision for the management and holding of certain funds of the Presbyterian Church in connection with the Church of Scotland, "now held in trust by certain commissioners hereinafter named, for the benefit thereof, and also of such other funds as may from time to time be granted, given, bequeathed, or contributed thereto." In accordance with the application, the Ontario Legislature passed an Act, which vested all the property of the different churches so united in the united body under the name of "The Presbyterian Church in Canada." Then came reservations and modifications of certain rights, and then, by section 4, certain legislation in Ontario, respecting the property of religious institutions is made applicable to the various congregations in Ontario, in communion with the Presbyterian Church in Canada. Section 5, declares that all the property, real and personal, belonging to or held in trust for the use of any college, or educational, or other institution, or for any trust in connection with any of the said churches or religious bodies, either generally or for any special purpose or object, shall, from the time the said contemplated union takes place, and thenceforth, belong to, and be held in trust for, and to the use in like manner, of "The Presbyterian Church in Canada." Sec. 7, then deals specially with Knox College and Queen's College in Ontario, and with the Presbyterian College and with Morin College in the Province of Quebec. Sec. 8, deals with the Presbyterian Church of Canada in connection with the Church of Scotland, "Administered by a Board incorporated by Statute of the heretofore Province of Canada." Sec. 9, deals with the Widows' and Orphans' Fund of "The Canada Presbyterian Church," and "The Presbyterian Church of Canada in connection with the Church of Scotland." Sec. 10, authorizes the new body to take gifts, devises, and bequests, and lastly, sec. 11, declares that "the Union of

the said churches shall be held to take place so soon as the Articles of the Union shall have been signed by the Moderators of the said respective Churches." The legislation in the Province of Quebec took the form of two Acts, 38 Vic. caps. 62 and 64, the former respecting the Union of certain Presbyterian Churches, the latter, "An Act to amend the Act intituled "An Act to incorporate the Board of Management of the Temporalities Fund of the Presbyterian Church in Canada in connection with the Church of Scotland."

The Act declares that the Union of the four Churches is to take place from the publication of a notice in the Quebec *Gazette*, to the effect that the Articles of Union had been signed by the Moderators of the said respective Churches. it also adds a clause which says: "In so far as it has authority to do so, the Legislature of the Province of Quebec, hereby authorizes the Dominion Legislature, and the several Legislatures of the other Provinces, to pass such laws as will recognize and approve of such Union throughout and within their respective jurisdictions." The other of the Quebec Acts, transfers all of the whole of the Temporalities Fund over to the New Church, and confides its management to a Board constituted in a manner different from the Board under the old Act. The Union was perfected in both Provinces in the manner prescribed by the Acts.

From these circumstances arose first in Upper Canada the cases of *Cowan* v. *Wright* and *Hall* v. *Ritchie*,[1] in which the new or united body sought to restrain certain of the old congregations which had not entered their dissent in the manner prescribed by the Ontario Act from interfering with the new body in their use of the church. The question of the constitutionality of the Act was thereupon raised, and it was contended that, "the whole question of these church properties as regards this union could only be dealt with by the Parliament of Canada, and not by the Provincial Legisla-

[1] 23 Grant Ch. Rep. 616.

ture."[1] The same question had been previously raised by "petitions addressed in the first instance to the Governor-General and afterwards to Her Majesty's Secretary of State, representing the serious and unprecedented infringment of rights, both spiritual and temporal, and the setting aside of a Royal Charter passed under the Great Seal, proposed to be affected by these local Acts."[2] "On November 23rd, 1875, upon the recommendation of the Minister of Justice it was decided by the Governor-General in Council in the case of one of the Acts aforesaid (38 Vic. cap. 75), that it should be left to its operation, inasmuch as it dealt with matters within the competency of the Local Legislature, save only with respect to the seventh clause, which professed to deal with Presbyterian colleges at Montreal and Quebec, and with certain funds which are outside the Province of Ontario. These provisions were allowed to be *ultra vires* and inoperative, although the disallowance of the whole Act could not be advised on this account.

On March 13th, 1876, the Governor-General transmitted the petitions and papers to the Colonial Secretary. In reply, the Secretary of State requested that the memoralists might be informed that he concurred in the opinion expressed by the Govenor-General in Council, that the Acts in question are now in full operation and no appeal can be brought against them, unless upon the plea that the Provincial Legislature was incompetent to pass them, "*in which case it would be open to test that question in a court of law.*" The complainants then availed themselves of the suggestion and brought the actions above alluded to. Judgment was rendered by the court in exact accordance with the opinion pronounced upon the Act by the Dominion Minister of Justice. The validity of the Act itself was confirmed, save only as respects so much of the seventh section as claimed to deal with institutions and property outside the limits of Ontario. That portion of the Act was declared to be *ultra vires*, but it was shewn that by legislation in the Province of Quebec this

[1] *Re* Goodhue, 19 Grant, 366.

[2] Todd, Parl. Gov't. in the Colonies, 535.

defect could be remedied, which removed all ground of objection to the legality of the Statute and to the agreement between the churches based thereupon.[1]

In the Quebec case, to which we now arrive, the Rev. Mr. Dobie, a minister of the Presbyterian Church in Canada, in connection with the Church of Scotland, residing in Ontario, applied to the Superior Court, Montreal, for an injunction to restrain the new body from dealing with the Temporalities Fund. This application was refused on the same ground as that in Ontario, viz.: that under the clause of the British North America Act, giving to the Local Legislature power to make laws, concerning property and civil rights in the Province, the Act was constitutional. In appeal the judgment was confirmed by three out of five judges, but of the three, one (McCord, J.,) was against the constitutionality of the Act, but acquiesced in the judgment on other points. So that, with the Judge below, opinion was equally divided, and in point of fact, but for collateral questions the judgment in appeal would have pronounced against the new body, and the power of the Local Legislature to pass the Act in question. The remarks of the learned Judge who acquiesced for different reasons leave no doubt whatever on this point. He said: "As to the law of the case, I am of opinion that the Quebec Act, in so far as it alters the constitution, composition and succession of the Board for the management of the Temporalities Fund, is *ultra vires*. The Board in question is a corporation created by the Statute of the late Province of Canada (now the Provinces of Quebec and Ontario) 22 Vic. cap. 66. It was created for the management of a fund derived from and existing in both Ontario and Quebec, and belonging to a Church, the territorial limits of which embraced both provinces, and the government or synodical management of which was not carried on in one province only, but in both. This cor-

[1] Todd, Parl. Gov'ts. in the Colonies, 356. I have chosen to quote the decision of Blake, V.C., in Cowan & Wright from Mr. Todd's excellent work rather than from the report itself, as, though not stated with strict legal accuracy, it gives the effect of the judgment in a very intelligible manner.

poration was not created for a "provincial object" nor has it a provincial character. On the contrary, it was created in the interest and for the advantage of both provinces. Being created for two provinces and applicable to them both, it can only be altered by a Parliament having power to legislate for these two provinces. The character and scope of this corporation could not cease or change by reason of the fund happening at any time to be invested wholly in one of the provinces, and of the place of business of the corporation being at that time within that province. The Board could at any time remove its investments and its place of business to the other province, and its powers of management would not be otherwise confined to either province. The corporation is but a mere accessory of the property which it has to administer, and though the Provincial Legislature may control the "property" within its limits, and even the "rights" of the corporation in connection with that property, it cannot alter the corporation itself. If the legislative control of the property carried with it the power to alter the corporation the consequence would be, that if, as may be the case at any future time, one portion of the fund was invested in Ontario and the other in Quebec, one Provincial Legislature could enact that the corporation should be composed of one set of persons and the other Legislature could ordain that it should consist of another set of persons. And the absurd conclusion would be that there would be two Boards of Management. It seems to me, therefore, that the provisions of the Act, 22 Vic. cap. 66, respecting the composition and formation of the Board have not been set aside by the Quebec Act, 38 Vic. cap. 64, and are still in force, for it is evident that they could not be set aside by the mere action of the Synod. It is true, as the respondents say in their factum, that it was the Synod who devised the mode of election and got the Act of Incorporation, but it required a competent Legislature to *create* the corporation and to establish the mode of election of its members, and the Synod could no more change the corporation by altering that mode than it could

in the first instance create the corporation. Consequently the present Board, which it is admitted is not composed of the persons or in the manner prescribed by the Act, 22 Vic. cap. 66, is illegally constituted."

And Ramsay, J., who reviewed the whole argument against the constitutionality of the Act in a very able and elaborate manner, said: "As a fact, it is admitted that all the property and money of the Temporalities Fund is situated or invested in the Province of Quebec. The respondent, relying on sub-section 13 of section 92, B. N. A. Act, which gives legislative power to the Provincial Legislature over 'property and civil rights in the Province,' contends that, having full control over all property, the Legislature of Quebec has full power to deal with all property which may exist in the Province of Quebec, and consequently that it has the power to confiscate the funds of the Presbyterian Body situate in the Province of Quebec, and present them to some one else, and that this has been done. On the other hand, appellant contends that the Local Legislature has no right to incorporate any companies but those having provincial objects (*Ib.* section 11), that this is tantamount to saying that the right to incorporate companies with other than local objects is exclusively reserved to the Dominion Parliament (Sec. 91, L. S. P.), that the board of management was an incorporation for other than provincial objects, and therefore that it could not have been created a corporate body by a local Act, and consequently that its act of incorporation cannot be altered or amended by any local legislature. I must confess that the sections upon which the contending parties rely, to me appear to be irreconcilable by themselves. If the local power to legislate over property and civil rights in the Province is to be interpreted to mean over 'all' property, etc., then the power of Parliament to incorporate is illusory. In practice it never has been contended that property means all property. Railway companies incorporated by Parliament, for instance, hold and manage their property under Dominion laws, and such companies evict people from their private

property under Dominion laws. No one will venture to affirm that a local Act could confiscate the property of a railway company incorporated by Parliament, or transfer it to another company or person; * * * * * * nor could, by parity of reasoning, the Local Legislature confiscate the surplus funds of a bank on the pretext that it was property in the Province. It is impossible to conceive more obvious limitations to the right to legislate as to property, than these."

And further on, answering the remarks of Blake, V. C., in *Cowan* v. *Wright*, the same learned judge says:—

"There is a sort of floating notion that by the conjoint action of different legislatures the incapacity of a local legislature to pass an Act may be in some sort extended. Section 15 of the 38 Vic., cap. 62 (Quebec), seems to have been added under the influence of such an idea. By it the Dominion and Local Legislatures are permitted to recognize and approve. I cannot understand anything more clear than this, that the Local Legislatures, by corresponding legislation cannot in any degree enlarge the scope of their powers. When the question is between the authority of Parliament and that of a Local Legislature, the forbearing to legislate in a particular direction by Parliament may leave the field of local legislation more unlimited. This is the only bearing I can conceive the case of the Union St. Jacques and Belle Isle can have on this case. What the Privy Council held in that case, was that a special Act for the relief of a corporate body did not fall within the meaning of "Bankruptcy and Insolvency," (B. N. A. Act, sect. 91. s.s. 21) and this more particularly as there was no Dominion Act with which it interfered. It is, therefore, dead against the pretension of respondents in this case, for the legislation objected to upset a Dominion Act, that is to say, if corporations which have not alone provincial objects (provincial according to the meaning of the B. N. A. Act, *i. e.*, relating to one Province under the Act) created before Confederation, are under Dominion Laws. On this point there has never been a doubt. For instance, the Acts of

incorporation of the G. T. Railway, an old Province of Canada incorporation, have been amended by Dominion Acts, never by local ones.

* * * This appears to me to be decisive in the present case, and I feel myself compelled to come to the conclusion that a local act which disposes of the property of a corporation created by a federal law is unconstitutional."[1]

The difficulty which has thus arisen from apparently conflicting clauses of the British North America Act, does not appear to be altogether insurmountable. It is a well known rule of interpretation that language must be interpreted in that sense in which it will have effect, rather than that in which it will have none, in that sense in which its application will be practicable and not impracticable. And if the words "property and civil rights in the Province," are held to mean "all property," and under all circumstances, general as well as special, it will be found that in effect the application of them in that sense is impossible. As pointed out by Ramsay, J., such an interpretation of them would bring them into hopeless conflict with rights which are undoubted, and, as in the cases cited, with other provisions with which it would be impossible to reconcile them. They would be found to be in direct collision with almost every clause of the preceding section, which enumerates categorically, the powers of the Dominion Parliament. But, if those words are interpreted to mean the power of making general laws, with regard to "property and civil rights in the Province," they will be found to have an intelligible meaning, and one capable of application, without danger of collision with other provisions of the same Act.

In delivering the judgment of the Court, in L'Union St. Jacques and Belisle (which, by some strange view of its effect, has been quoted in favor of the constitutionality of the Acts in the Presbyterian Church case), Lord Selborne

[1] 3 Legal News, 244. I have felt myself justified in quoting thus largely from the remarks of the dissenting judges, because, as stated in the text, the judges who agreed as to the unconstitutionality of the Act (which is the only point which concerns this work) were really a majority of the court.

said: "But the onus is on the respondent, to shew, that this being of itself of a local or private nature, is comprised in the enumeration of the classes of subjects especially enumerated in the 91st section. Now it has not been alleged, that it comes within any other classes of the subjects, so enumerated, except the 21st, 'Bankruptcy and Insolvency,' and the question, therefore is, whether this is a matter coming under the class 21, of bankruptcy and insolvency?" Their Lordships observed, that the scheme of enumeration in that section, is to mention various categories of *general subjects*, which may be dealt with by legislation.

There is no indication, in any instance, of anything being contemplated, except what may properly be described as general legislation; such legislation, as is well expressed by Mr. Justice Caron, when he speaks of the general laws, governing *faillite*, bankruptcy and insolvency, all which are well known legal terms, expressing systems of legislation, with which the subjects of this country and probably of most other civilized countries, are perfectly familiar."[1]

The language which was used by Judge Caron, as referred to, was still more pointed to this effect,—"*La legislature locale*," said the learned Judge, "*en accordant ce qui etait demandé n'a sûrement pas touché les lois generales reglant la faillite, la banqueroute et l'insolvabilité; c'est un acte particulier qui n'a rien de commun avec les lois generales sur ces differents sujets.*"

And Judge Badgeley (also dissenting in appeal) enunciated, precisely the same doctrine. "The theory," he says, of the general legislative powers of the Dominion is expressly general in the enactment of general laws upon its exclusive subjects enumerated for its action."[2] Here then, we have a rule of interpretation of these apparently conflicting clauses of the British North America Act, propounded by two eminent judges in appeal, and adopted by the judicial committee of the Privy Council, in the case of the

[1] 20 L. C. J. 47.
[2] 20 L. C. J. 32.

Union St. Jacques and Belisle, and followed by the Court of Appeal in Ontario, in Leprohon and the City of Ottawa, and by Judge Rainville, in *Evans* v. *Hudon*, in Quebec, and again by the Privy Council, in Bourgouin and The M. O. & O. Railway,[1] with this difference, that in the three latter cases, the rule was applied conversely, that is to say, that in the first case, the theory of general legislation was applied to the power accorded to the Dominion Parliament, to make laws regulating matters of bankruptcy and insolvency, so as to admit the right of the Local Legislature to pass an Act for the settlement of an individual estate, though in an insolvent condition; and in the latter cases, to the power accorded to the Provincial Legislatures, to make laws for the regulation of property and civil rights within their respective limits, so as to restrain them from encroaching on the domain of the federal parliament, or surpassing their own, as defined by other provisions of the same Act.

Applying this rule then to the Presbyterian Church cases the argument will be found still stronger against the constitutionality of the Acts out of which they arose, than it was in *Leprohon* v. *The City of Ottawa*, and *Evans* v. *Hudon*. In those cases, the Local Legislatures, by what apparently was otherwise a perfectly legitimate exercise of the power conferred upon them, by clause 13 of section 92, came into conflict with the rights of the Dominion Parliament, as conferred by section 91; while, in the Church case, the Local Legislatures, by passing Acts for the incorporation and regulation of an institution extending over both provinces, have over-stepped the limits prescribed for themselves in such matters by no less than two clauses of section 92, viz.: clause 11, which confines their powers of incorporation to companies with provincial objects; and clause 16, which

[1] The case of *McClanaghan* v. *St. Ann's Mutual Building Society*, referred to by Dorion, C. J., in *Dobie* v. *Temporalities Board*, is scarcely a case in point as not only is there no authority under the B. N. Act for legislation by the Dominion Parliament in matters of societies whose operations are confined to one Province, but independent of the clause which gives to the local legislatures jurisdiction in matters of property and civil rights under legislation, it is opposed to the clause which gives to them control in all matters of a purely local or private nature in the Province.

says: "Generally all matters of a merely local or private nature *in the Province*." The rule deducible from these cases therefore would appear to be, that the powers conferred upon the federal and local legislatures respectively, by sections 91 and 92, must be regarded as general, and not to be applied by the one to individual cases, where such an application would bring it into conflict with the general powers of the other, or would overstep the limits otherwise prescribed.

3—Notice of Application.

4. The applicants for such letters patent must give at least one month's previous notice in the *Canada Gazette* of their intention to apply for the same, stating therein:

1. The proposed corporate name of the Company, which shall not be that of any other known company, incorporated or unincorporated, or any name liable to be confounded therewith, or otherwise on public grounds objectionable;

2. The purposes within the purview of this Act, for which its incorporation is sought;

3. The place within the Dominion of Canada, which is to be its chief place of business;

4. The intended amount of its capital stock; which, in the case of a Loan Company, shall in no case be less than *one hundred thousand dollars*;

5. The number of shares and amount of each share;

6. The names in full and the address and calling of each of the applicants, with special mention of the names of not less than *three* nor more than *fifteen* of their number, who are to be the first or Provisional Directors of the Company, and the major part of whom must be resident in Canada.

(*a*) *Notice.* Under the Imperial system which, as has been already pointed out, is by registration, no notice is required. The object of the notice here, is clearly to give opportunity for objection to the granting of the charter, if such there may be.

But the statements required in the memorandum of association are much the same as those here given.

(*b*) *Name of Company.* The amount of litigation which has in times past arisen from a confusion of names, has led to a provision, in all the more recent Acts, putting the promoters on their guard against selecting a name liable to

be confounded with one already in use.[1] At the same time it is said that "A company cannot acquire an exclusive right to use in its title of incorporation, a general term, descriptive merely of the locality with which the business carried on by the company, is connected."[2] Thus, a company could not claim the exclusive use of the word "colonial," even though it be prejudiced by another using it.

The use of the word "Royal" is prohibited by the English Statutes, without a special license of the Home office. As to a confusion of names, a number of interesting cases have arisen.

In the case of *Lee* v. *Haley*,[3] it was *held*, that there was no property in the name of "The Guinea Coal Company," except so far as its use in the same locality was involved; and that, therefore, a company using that name in the Strand, London, was no interference with the rights of a previous company of that name, established in Pall Mall.

And in the "London Assurance Company" against the "London and Liverpool Assurance Company," and the "Law Life Company" against the "Equity and Law Life Company," and "The London and Provincial Law Assurance Society," against the "Provincial Joint Stock Life Assurance Company," injunctions to restrain were refused, the Court holding that there was no interference. And where the London Assurance had adopted the affix "Corporation" an injunction was refused to restrain the London and Westminster Assurance Corporation from using the same affix, the term being general, and not subject to exclusive use or right. And it would appear also, that to claim such a right in any case, the parties claiming it must have completed their organization and entered upon the actual use of the name, the right to which they claim. Thus, where the plaintiff

[1] The English Act says: No Company shall be registered under a name identical with that by which a subsisting company is already registered or so nearly resembling the same as to be calculated to deceive, except in a case where such subsisting company is in course of being dissolved, and testifies its consent in such manner as the registrar requires: Act, 1862, sec. 20.

[2] Chadwick-Healy, Joint Stock Companies, p. 10.

L. R., 5 chap., 155.

had instituted a Bank under the name of "The Bank of London," and had spent a good deal of money in getting under way, and had caused the name to be published in prospectuses, and affixed to the offices of the bank, *held*, in an action against another bank institution, which had secured letters patent, subsequent to the publication, etc., by plaintiff, and was doing business in the same name, that the plaintiff's declaration was bad, for not shewing that he actually did business as a banker in that name, and that he had shewn no right of action against defendants.[1] A name however, which is objectionable from any cause, may be changed, as pointed out by sections 11-12 of the Act.[2]

(c) *The purposes, etc.* The subject of the objects to which the general Act applies, as distinguished from those subject only to the local statutes, has already been discussed.[3] But it may be said that in setting out the objects of the company under this section, too much care cannot be used, as the charter will be granted for those purposes, and those only set forth in the notice or petition, and no change in or extension of such objects can be made by the members of the company, however desirous they may be of doing so, except subject to the same formalities as those by which the charter was obtained.[4] "A corporation is a creature of the law, formed and organized for the particular objects specified in its instrument of incorporation, and if it goes beyond those objects all its acts done in excess of them are void.[5] By several English cases, it appears that opinion was much divided on the question of whether the company could enter into a contract, which would be binding beyond the objects for which it was incorporated. But by section 14[6] of the present Act, supplementary letters patent may be obtained, extending the powers of the company to other purposes and objects.

[1] *Lawson* v. *Bank of London*, 18 C. B. 84; 2 Jur. N. S. 18; 25 L. J. C. P. 188.
[2] *Vide post.*
[3] *Ubi supra.*
[4] *Vide* sec. 14, *et seq. post.*
[5] Thring, Joint Stock Companies, p. 98, and cases there cited.
[6] *Vide post.*

It may be a question also as to what would be considered within or without the range of "the purposes," as specified in the notice and petition, and cases have arisen from time to time, exemplifying this. Thus, where the objects of an "estates" company, were the acquisition of land for building on, letting or selling, it was held, that this carried with it an implied power to issue negotiable instruments.[1] And when the objects of a company, comprised the doing or making something by patented machinery, it was held, that this included a power to purchase the patent.[2]

But when it is intended that the company shall have power to deal in its own shares, it should be so stated in the memorandum (or notice.)[3]

These cases however more properly belong to the general question of the powers of the company, and will be found referred to more fully under that head.[4]

(*d*) *Place of Business.* The notice must also, says the Act, state the place, *within the Dominion* of Canada, which is to be the chief place of business of the proposed company. There are several reasons for this. A knowledge of the proposed chief place of business of the company is to some extent necessary, in order to decide upon the expediency of granting the charter and, if granted, governs the question of jurisdiction and service of legal process,[5] out of which a number of very interesting and important points have arisen from time to time, such as the right of a company :—

To do business beyond the limits of the jurisdiction in which it was created;

To sue or be sued in a foreign country;

[1] *In re* General Estates Co., ex. p., City Bank, L. R., 3 ch. 758.

[2] *In re* British & Foreign Cork Co., Leifchild's Case, L. R., 1 Eq. 231.

[3] *In re* London, Hamburg and Continental Exchange Bank, *Zulueta's Claim*, L. R., 5 ch. 444.

[4] *Vide* sec. 32, *post*.

[5] See further on this point, sec. 60, *post*, and concerning the right to establish agencies, sec. 86, *post*.

To sue or be sued any where, but where such chief place of business is situated.[1]

The first of these questions is a very peculiar one. Regarded from the point of view of the common law it would involve merely the *right* of a corporation to do business in a foreign country, and therefore one necessarily governed by the law of that country, in which it attempted to establish a part, or the whole of its business. Were a company created by special Act, for instance, with *power*, specially conferred, to do business in the State of New York, the only point which would arise in connection with the establishment there of its business would be—will its existence there be recognized by the law of the State of New York? But were a company formed under the present Act to establish business in New York a different question would arise, viz.: "Has it power under the Act, and under its charter to extend its business into foreign jurisdictions?"

This question is one of some importance as involving the security of the shareholders and creditors, but it does not appear to have been raised in England under the Acts of 1862 and 1867, nor do these Acts make any provision regarding it except the language of section 211 may be taken as throwing some light upon it. By that section it is permitted to Joint Stock Companies to change their registered office "from any one part of the United Kingdom to any other part thereof," upon application, etc., but nowhere is any power given to a company to carry its business, or any part thereof, into a foreign jurisdiction.

But the first question, viz.: as to the *right* of a company to carry on business in a foreign jurisdiction, has been the subject of many interesting decisions.

"In the United States," says Brice,[2] "where the same question has been raised, the decision seems to be absolutely and without qualification in the negative. A corporation

[1] And the converse of these questions is raised by clause 6 of this sec., *post*.

[2] Ultra Vires, p. 9.

can have no legal existence out of the boundaries of the sovereignty by which it was created. It must dwell in the place of its creation, and cannot migrate to another sovereignty." But this doctrine, which is given as arising out of decisions rendered in the United States, must not, as the same writer points out, be taken too literally.

In a number of later decisions this statement of the law has been very much modified, not so as to establish any inherent right in a company to do business beyond the jurisdiction in which it was created, but so as to recognize the practice of allowing them to do so in conformity with the laws of the foreign state. The principle, as now regarded, was well stated in *Ducat* v. *The City of Chicago*,[1] in which it was said that the right of a corporation created in one state to do business and make contracts in the full enjoyment of its powers in another state, is a right based upon the comity between the states, and is a voluntary act of the sovereign power, but when contrary to good policy or prejudicial to the interests of the state, the comity ceases to be obligatory. And an averment that the defendant is a foreign corporation, recognized under the laws of another state, is a sufficient averment that the defendant is a citizen of such state.[2]

The right therefore of a company to do business in a foreign jurisdiction, cannot be regarded as inherent, but bestowed. And so far has the application of this principle been carried, that in two judgements rendered by the Ontario Court of Appeals in March and May 1879, concerning certain Insurance Companies, it was held "that, while the regulation of trade and commerce in Canada was within the exclusive jurisdiction of the Dominion Parliament, and while that parliament was competent to incorporate companies to transact insurance business throughout the Dominion, with liberty to enter into such contracts as should come within the designated purposes of the company; yet that it

[1] Su. Ct. Ill. 426.
[2] *U. S. Ex. Co.* v. *Knutze*, Su. Ct., 43.

had no power to confer privileges to be exercised within any of the Provinces, except with their assent and recognition, and could not authorize a company created by Dominion legislation to make contracts in particular provinces, except as the legislature of the province might ratify and approve. *Any provincial legislature was competent in its discretion to exclude a Dominion corporation from entering into contracts* [of insurance] *within the limits of the province*, or might exact whatever security they should deem to be reasonable for the performance of its contracts."[1] All companies therefore organized under the present act are but bare existences without right to do business anywhere except by the good will and sufferance of each particular province in which they may desire so to do,[2] the only guarantee for which is the interest which every place possesses of encouraging within its borders, all business of every kind not inconsistent with public policy, etc. But in practice, the right of such a company to carry on business, and to sue and be sued is universally recognized.

And where foreign corporations assume to do business of a particular kind, the courts of the state in which such business is conducted will presume that they act under a general, and not a limited authority.[3]

So that the solution of the question depends upon two things, viz.: 1. The *powers* enjoyed by the company under its charter of incorporation, and the law under which that charter was granted, and 2. Its *right*, under the law of the foreign state, to establish itself and do business there.

That a state has the power to authorize a company "to migrate" and establish itself elsewhere, there appears to be no more reason to doubt than that it has the power to authorize an individual to do so. For a corporation is a person, though an artificial one, created for a certain object, and if, in furtherance of that object, it is found expedient to open a

[1] Todd, Parl. Gov't. in the Colonies, p. 378.

[2] If this somewhat startling proposition be correct, it would seem to be desirable that each Province should enact a general law to cover the point.

[3] *New England, etc., Ins. Co.* v. *Hasbrook*, 32 Ind. 447, Su. Ct., 1869.

branch establishment and carry on business in a foreign country, if that country is willing to receive and recognize it, there seems no good reason why they should not be empowered to do so.

But the question arises, can companies formed under the present Act be so empowered? And if we consider the language of sections 60 and 86,[1] we must come to the conclusion that they cannot beyond the limits therein specially mentioned. On the principle *expressio unius exclusio alterius*, the authority given by the Act to enable companies formed under it to carry on business elsewhere than in Canada, must be held to be confined to the places therein mentioned; and that a company contemplating doing business in or extending its business to the United States, for example, would require a special Act of Parliament to enable it to do so.

Again the right to carry on business in a foreign state must not be confounded with the power to enter into contracts and incur obligations simply beyond the jurisdiction in which it was created.

This latter is not precisely the same as the other, though embracing the same two points, viz.: 1. Is it within the scope of the powers with which it was invested by its charter to so contract; 2. If so, can it (*i. e.*, has it the right by the law of that country to) enforce such contracts; or, in other words, can it sue and be sued in a foreign country. The first part would be controlled by the general contracting powers of the company. As stated in *Augusta* v. *Earle*,[2] a leading case in the United States, and followed by Brice:[3] —"The corporation must, no doubt, shew that the laws of its creation gave it authority to make such contracts." And, if it possesses such authority, it can enforce them. This point was very elaborately stated in the same case, and the decision has been followed in all the courts of the United

[1] *Vide post.*
[2] 13 Pet. 519.
[3] Ultra Vires, p. 10.

States.[1] In England, this point was thus stated, in the *City of Berne* v. *The Bank of England.*[2] "It is thought that any association or body capable of sueing, and being sued in the courts of its own country (provided the government of that country be recognized by, and be at peace with this country) can sue and be sued here." And by Erle, C. J., in *Bramley* v. *The South Eastern Railway Company*[3]:—"A foreign company has a *locus standi* here, and so no doubt has an English company in a foreign country. We make no inquiry into the constitution of a foreign company any more than we should the generation of an individual suing here.[4]

And in the United States, it is said that when a bill is filed in one state against a corporation created by the laws of another state, it is no objection to the jurisdiction of the court, that such corporation has no property in the district in which the bill was filed, and no property anywhere but its unpaid subscriptions.[5] But such foreign corporation cannot escape from its liabilities under a foreign law, which is opposed to the Constitution of the State in which such liabilities were contracted. Thus, in an action against the Canada Southern Railway, in the United States, to recover unpaid interest on mortgage bonds, the defendant alleged that, by an Act of the Canadian Parliament, passed in 1878, it was discharged from the payment of these bonds, on issuing new ones at a lower rate of interest. The Act declared that the assent of the bond holders should be deemed to have been given to the substitution of the bonds. *Held*, that "such legislation in this country would have been un-

[1] For a fuller account of this important judgment, see Angell & Ames, Corporations, sec. 273; and in another case said, agents and officers of a corporation chartered in one state may bind it by contracts and agreements made in other states, and the minutes of its board of directors may be used in evidence of the acts of the board, even though the meetings of the board appear to have been held out of the chartering state. *Wood Hydraulic Co.* v. *King*, 45 Ga. 34, Su. Ct. 1872; Abb. Dig., Vol. II.

[2] 9 Ves. 347.

[3] 12 C. B. N. S. 70.

[4] See also Shelford, Joint Stock Companies, 2nd Ed., p. 411, for reference to a number of cases of foreign companies suing and being sued.

[5] *Winans* v. *The McKean R. R. Co.*, U. S. C. C., N. Y., 103, Withrow's Corporation Cases.

constitutional, and that country can ask no recognition of foreign legislation, which is repugnant to the fundamental principles of the *lex fori*."[1]

In Canada, the same doctrine was held in the *Connecticut and Passumpsic Rivers Railway* v. *Comstock*,[2] in 1870, in which it was said that a foreign corporation legally incorporated may validly enter into contracts in this Province and sue in the courts of this Province the persons with whom they contract, to compel them to fulfil their obligations.

This decision indicates very clearly an advance in the jurisprudence of this country on this subject since the date of the decision of *Bank of Montreal* v *Bethune*[3] decided in the King's Bench in Upper Canada in 1836, (prior to the Union of Upper and Lower Canada). The action was for the recovery of the amount of certain promissory notes, the drawers and endorsers of which resided in Upper Canada, and *held*, "that a foreign corporation, such as a Bank, cannot maintain an action upon promissory notes received and discounted by them in the course of banking business in this province, although they may maintain an action for money had and received to their use against the person for whom such note were discounted, and to whom money was advanced upon them." According to this decision, a partial right of suing and enforcing contracts was accorded in Upper Canada at that period to corporations created in another jurisdiction, while by the judgment in *Connecticut and Passumpic River Railway* v. *Comstock*, at a later period, a full and unrestricted right was recognized in Lower Canada in such cases. And in a still later case in Upper Canada, in which a company created in England, under the Act of 1862, sued a past member in this country to have him placed on the list of contributories, it was said, incidentally, that as a matter of course the plaintiff had a right to sue there.[4]

[1] *Gebhard* v. *Canada Southern Railway Co.*, C. C., N. Y., 1880.
[2] 1 Rev. Leg. 589.
[3] Robinson & Harrison's Digest, p. 128.
[4] *Barned's Banking Co.* v. *Reynolds*, 3 App. Ont. 371.

The tendency indeed of late years has in all countries been to remove as far as possible the disabilities attaching by the common law to foreign companies and corporations, especially those organized for banking purposes. Nor is this tendency at all affected by the decision in *The Chaudiere Gold Mining Co.* v. *Desbarats*, which arose in the Province of Quebec, and was decided in the Privy Council in 1873, as the judgment in that case though concerning a foreign corporation, turned entirely upon the general question of the right of a corporation to hold lands in mortmain without the permission of the Crown.

And, if it can sue and be sued beyond the jurisdiction in which it was created, it can also sue and be sued anywhere within it, no matter whether such place be its chief place of business or not. The object of having a fixed legal domicile is for settling the place of service of process or similar notice, and not of limiting the jurisdiction to which it is amenable, or to which it can apply.

(*c*) *Amount of Capital.* The notice must also state the intended amount of its capital stock. The object of this is evident. Indeed this may be said to be the most important of all the statements required. By it the public are enabled to judge of the amount of credit the company is worthy of and the extent to which it may be safe to go in dealing with it. The amount of its nominal capital must not, however, be confounded with its real capital or mistaken as its basis of credit. It only becomes such when it is all subscribed and actually paid in, and only then at the beginning of its career. After a company has been in actual existence for a length of time a knowledge of the actual condition of its affairs is the only safe guide to its trustworthiness. Losses may have occurred in the course of its operations by which its capital has become seriously impaired, and as the members cannot be looked to, where the capital is all paid up, the actual means in the hands of the company is all that the public have to rely upon for a settlement of its indebtedness. "If

the company," says Thring,[1] "intend to conduct a business dependent in a great degree on credit—by banking or discounting bills—and be formed on the principal of limited liability, the nominal capital should be considerably greater than the immediate necessities of the company require, as the balance remaining uncalled, will, if the shares are in the hands of substantial holders, be a sufficient security for the creditors. On the other hand, if the object of the company be to purchase a park, * * to make gas works, or to do any other work in which the current expenses will be small as compared with the cost of acquiring the property, the capital should be of adequate amount to make the proposed purchases, but need not leave a large reserve, as there will be no difficulty in raising money on the security of the property." And by another authority,[2] it is said that "the amount of the capital stock of a corporation is not *per se* a limitation of the amount of property, real or personal, which it may own or, by implication, of the amount of its liabilities or outstanding obligations, but is rather regarded as the sum upon which calls may be made upon subscribers and dividends are to be paid to stockholders. Accordingly, where the capital stock of a building corporation was one million dollars, it was *held*, that this did not restrict the company from expending in their buildings two million dollars, and from incurring debts on bonds and mortgages for the excess of cost beyond their capital—their power to take and hold real estate, being in other respects unlimited by the terms of their charter."

Its nominal capital, as will be seen below,[3] may be reduced or increased from time to time as circumstances appear to warrant.

(f) Division into Shares. The division of the capital into shares payable to bearer is of course one of the most strik-

[1] P. 132.

[2] Angell & Ames. Corporations, sec. 151.

[3] *Vide* sec. 20, *et seq.*, *post*.

ing features of a company organization as distinguished from an ordinary partnership.

It is this which enables all the world to contribute to its capital fund, by which its membership may undergo daily alteration without any derangement of its corporate functions and which gives generally that elasticity to a company which forms its chief advantage.

"The amount of each share," says one writer,[1] "is a matter for much consideration, and will differ according to the nature of the company." "If the objects of the company be popular," says Thring, "it may be advisable to make the shares of small amount, with the view of attracting numerous applicants."

No limit is now placed as to the amount of each share, either by the Canadian or Imperial Statutes, though formerly, under the latter, the shares could not be less than £10.

(*g*) *Names of Applicants, etc.* The mention of the names of the applicants is of course, but the object of the mention, in the notice, of the names of the provisional directors is not so obvious.[2] The idea, probably is to give the Governor in Council some criteria by which to determine the expediency, or otherwise, of granting the letters patent. But the names of the directors always, in the interests of the company itself, form part of the prospectus and other public announcements, in order to enable the public to judge of the advisability of taking part in the scheme, and these names can always be verified by the books and records of the company.

(*h*) *The majority of Whom, etc.* This clause raises the converse of the question discussed under clause 8,[3] viz.: the right of foreigners and of foreign corporations to do business in this country in a corporate capacity. That a

[1] Chadwyck-Healey, Joint Stock Companies, p. 33.

[2] No such provision is found in the Imperial Act, 1862, or its amendments.

[3] *Vide supra.*

foreign corporation can do business here is governed by the same rule as that laid down under the clause just alluded to; but to obtain the benefit of the Act, the majority of the corporators must reside in Canada. This would exclude foreign corporations from obtaining corporation here, if they found it to their advantage to do so, but whether it would prevent a foreign corporation from forming, with others resident here, a new corporation here, *quære.*

In England no such restriction is made. In *re* General Company for the promotion of Land Credit,[1] it was said that if it appears from the memorandum and articles of association, that some kind of management and business in England is contemplated, the company comes within the provisions of the Companies Act 1862, and may properly be registered under that Act, although all the subscribers to the memorandum and all the directors are foreigners residing abroad. And in *Princess of Reuss* v. *Bos*,[2] the decision went still further, and said, that foreigners on complying with the regulations of the Act, may obtain incorporation under it, though the business of the company seems intended to be transacted abroad, and though some of the shares are not registered in conformity with the Act.

And in the United States also, there appears to be no impediment to residents of a foreign state obtaining incorporation there. Indeed in several cases, held that the members of a corporation are legally presumed to be citizens of the state, by the laws of which the corporation was created.[3] But though the members comprising it be all foreigners, the corporation itself will be a subject of the state by the laws of which it was incorporated.

In other words out of the foreign elements, an artificial citizen is created with all the rights and liabilities of citizen-

[1] L. R., 5 ch., 363.

[2] L. R., 5 H. L., 176.

[3] *Hobbs, et al.* v. *Manhattan Ins. Co.*, Su. Ct. of Maine, 583; *Manufacturers' National Bank* v. *Caack, et al.*, C. C., N. Y., 93; Withrow's Corporation Cases.

ship as far as it is capable of possessing them.[1] But though this be so, the means possessed by this artificial citizen will be such, and such only as are contributed to it by the foreign elements of which it is composed, and the security of its creditors beyond this, must for the time being at least, be looked for in the State to which such foreigners belong and which is often difficult to reach. Hence no doubt the restriction embodied in this clause.

A foreign corporation carrying on business in this country would seem to stand under the same objection, but the position is not altogether the same. There the whole body is foreign and has no pretence to citizenship. Those dealing with it may do so with a full knowledge and consciousness of the position in which they stand and the security to which they must look. And even in those cases where the transactions involve extensive interests, as in the case of foreign insurance companies, the government undertakes for the security of its subjects to exact such a deposit as will secure and guarantee its obligations.

And where such corporations sue in the courts here, though they may have a general office and place of business in Canada, and even where a deposit has been made as above stated, the rule appears to be, that security for costs will be required to be given to the opposite party.[2] On this point, however, the decisions conflict somewhat, as in the *Globe Mutual* v. *The Sun Mutual*, in the Province of Quebec, Dorion, J., *held*, that security for costs was unnecessary.[3]

4.—Petition and Contents.

6. At any time, not more than one month after the last publica[illegible] such notice, the applicants may petition the Governor-Genera[illegible]sh the Secretary of State of Canada, for the issue of such letters p[illegible].

[1] *Commissioners of Penn.* v. *The Quicksilver Mining Co.*, Su. Ct., U. S. 57; Withrow's Corporation Cases.

[2] *Niagara District Fire Ins. Co.* v. *Macfarlane*, 20 L. C. Jur., 224; *The Globe Mutual Life Ins. Co.* v. *The Sun Mutual Life Ins. Co.*, 1 Leg. News, p. 139.

[3] 1 Leg. News, p. 53; regarding service of process, see sec. 61, *post*.

2. Such petition must recite the facts set forth in the notice, and must further state the amount of stock taken by each applicant, and also the amount paid in upon the stock of each applicant, and the manner in which the same has been paid in, and is held for the Company;

3. The aggregate of the stock so taken must be at least the one-half of the total amount of the stock of the Company;

4. The aggregate so paid in thereon, must if the Company be not a Loan Company, be at least ten per cent. thereof: if the Company be a Loan Company the aggregate so paid in thereon must be at least ten per cent. thereof, and must not be less than *one hundred thousand dollars*;

5. Such aggregate must have been paid into the credit of the Company, or of trustees therefor, and must be standing at such credit in some bank or banks in Canada, unless the object of the Company is one requiring that it should own real estate, in which case any part not more than one-half of such aggregate may be taken as being paid in, if *bona fide* invested in real estate suitable to such object, duly held by trustees for the Company, and being of the required value over and above all incumbrances thereon;

6. The petition may ask for the embodying in the letters patent of any provision which under this Act, might be made by by-law of the Company incorporated, and such provision so embodied shall not, unless provision to the contrary be made in the letters patent, be subject to repeal or alteration by by-law.

(*a*) "*The Notice.*" The reference to "one month's previous notice" in the first part of the previous section, when taken in connection with the present one, is rather ambiguous. It is evident that if the notice was published in the *Canada Gazette* on the 1st of June, for example, and the petition was filed on the1st of July, a month's notice would be given, in accordance with the requirements of the third section, but when we come to the present section, we are forced to the conclusion that this is not what is meant. For by the present section the petition must be filed at any time *not more than a month* after the last publication of such notice; so that if there was only one publication of the notice and the petition could neither be filed within the following month nor without it; it is clear there would only be one day on which the petition could be filed, and the words *at any time* would be much more like a stroke of legislature humor than a serious provision of law. But the words *after the last publication of such notice* make it evi-

dent that what is intended is a publication for four consecutive weeks, as mentioned in section 80,[1] and that the petition may be filed at any time within a month after the last of these.

(*b*) "*Must recite the facts*," *etc.* The petition must recite the facts set forth in the notice. This is similar to the memorandum, and articles of association under the English Act, any variation between them not only being fatal, but rendering the promoters liable to those who have invested their money in ignorance of such defect. In the present case, it is apparent that any substantial difference between the petition and notice would render null the publication of the latter and the proceedings would all have to be begun over again.

(*c*) "*And must state the amount of stock taken by each applicant*," *etc.* This and the three following sub-sections refer entirely to the same thing, viz.: the nature and amount of guarantee required of the good faith of the applicants before a charter is granted. They must show that they have sufficient faith themselves, in the scheme for which they ask incorporation, to become subscribers to and investers in its shares. At least one-half (at first sight a large proportion) of the total amount of the capital stock must be subscribed before filing the petition, and of this a tenth, must be paid in, and actually standing to the credit of the company or its trustees, in some chartered bank in Canada. So that if the proposed capital was, say one hundred thousand dollars, five thousand dollars would require to be paid in and standing to their credit in the bank, unless the object of the company be the acquisition of real estate, in which case one-half of the amount may be shewn to be so invested. And not only is it necessary that a certain amount should be subscribed and paid in, but, as a precaution against bogus subscriptions, the petition must set forth in detail the amount subscribed, and the amount paid in by each applicant.

[1] *Vide post.*

That these are an all efficient guarantee against fraudulent promotion may, perhaps, be doubted. The security afforded by requiring for instance, a certain amount to be actually paid in, is very small. Nothing is more easy, and it may be readily believed, nothing more common, among people who undertake the promotion of Joint Stock Companies, and who pretend to the control of capital, to deposit, as in the instance given above, the sum of five thousand dollars, for such a length of time as will satisfy the requirements of the petition and afterwards withdraw it. The deposit, with the consent of those who have been induced to put their names to the subscription list, may be distributed rateably with a few strokes of a pen so as to appear as having been paid in by such persons. What security this would furnish it is rather difficult to see; of course if it were a tenth that each was credited with, they would still be liable for the other nine-tenths, whether they actually contributed to the deposit or not; but *quid*, if their stock is represented as having been all paid up, (a thing not uncommon where the parties have been induced to lend their names for the purpose) where is the security then?[1] The parties accepting such paid-up shares however are not altogether free from liability. If it can be shown that they neither gave nor the company received value for such shares they may be held it appears to contribute to the extent of such shares to the liabilities of the company. The English text books abound in cases where parties in such position were held to contribute. *In re* Keyford Co., Pell's case,[2] P.'s name was placed on the list of subscribers for 1350 shares. By the articles of association *an agreement was ratified* under which 1500 paid up shares were to be given to P., in consideration of a good will and stock in trade. The master of the Rolls held that P. was entitled to an enquiry as to what was the value of the property sold,

[1] A statement, neither of any particular amount subscribed or of any particular amount paid in, is required by the Ontario Act. Rev. Stat. of Ontario, chap. 150, sec. 5.

[2] 17 W. R. 1054.

and to be allowed such value *but no more*, towards payment of his shares. "Under the Companies Act of 1862," says Thring,[1] "the subscribers of the memorandum of association are bound to take from the company as many shares as they have subscribed for, whether or not the shares are actually allotted to them. And this obligation is not satisfied by the allotment at a subsequent period of nominally paid up shares. They must be paid for, not necessarily in money, but either in money or in money's worth."

The 25th section of the amending Act of 1867 (Imperial), however, provides that the payment must be in actual cash, unless there is a written contract filed with the Registrar to the contrary. The present Act also provides for the same thing by a subsequent section.[2] By the Ontario Act, the payment may be either in cash or the transfer of property or otherwise; and by the corresponding section of that Act, it must be stated in the petition in what manner the payment has been made.[3]

(*d*) *Contents of Letters Patent.* The sixth sub-section contains a provision, which appears common to all the Canadian Acts, and by which matters, which otherwise would be the subject of a by-law under section 32, may be made to form part of the letters patent. The object no doubt is to give greater stability to those matters which it may be deemed desirable so to embody, and which, as by by-law, would be always subject to change, according to the whim or caprice of a majority of the directors.

5. Evidence of Petition.

6. Before the letters patent are issued, the applicants must establish to the satisfaction of the Secretary of State, or of such other officer as may be charged by order of the Governor-General in Council to report thereon, the sufficiency of their notice and petition, and the truth and sufficiency of the facts therein set forth, and that the proposed name is not the name of

[1] P. 38.
[2] *Vide* secs. 83 and 84, *post*.
[3] Rev. Stat. Ontario, chap. 150, sec. 5.

any other known incorporated or unincorporated Company; And to that end, the Secretary of State, or such other officer, may take and keep on record any requisite evidence in writing, by solemn declaration, under the Act, 37 Vict. (1874), chapter 37, intituled: "*An Act for the Suppression of Voluntary and Extra-Judicial Oaths*," or by oath or affirmation.

(*a*) "*Before the Letters Patent are issued.*" This section which really belongs to and is the necessary complement of the preceding one, provides for the establishment in some manner to the satisfaction of the Secretary of State, of the facts set forth in the petition,[1] and without which the requisition of any particular statement in the petition and notice would be useless. Such evidence in writing, by solemn declaration, under the Act referred to, subjects the person making it, to penalty for false statements as for a misdemeanor.

7. The Letters Patent.

7. The letters patent shall recite all the material averments of the notice and petition, as so established.

Any material variations in the letters patent would release the applicants *pro tanto* from responsibility for the correctness of the notice, etc.

8. Governor may Change Name.

8. The Governor may, if he think fit, give to the Company a corporate name, different from that proposed by the applicants in their published notice, if the latter is objectionable.

No similar provision is found in the English Act though the company itself may obtain a change of name, as hereinafter referred to.[2] Nor is such a provision found in the Canadian Act of 1869, nor in the Quebec Act, but it is in the Ontario Act, which goes still further and authorizes the Lieutenant-Governor to vary the objects of the company as set forth in the notice.

[1] "And further," according to the Quebec Act, "that the applicants and more especially the provisional directors named are persons of sufficient reputed means to warrant the application." The same thing is no doubt intended by the section in question though not expressed in so many words.

[2] *Vide* sec. 12, *post*.

It is improbable, however, that the Governor would exercise either of these powers without consulting the wishes of the applicants.

9.—Notice of Granting Letters Patent.

9. Notice of the granting of the letters patent shall be forthwith given by the Secretary of State, in the *Canada Gazette*, in the form of the Schedule A, appended to this Act,[1] and thereupon, from the date of the letters patent, the persons therein named, and their successors, shall be a body corporate and politic by the name mentioned therein.

(*a*) *Issue of Charter.* The notice and the letters patent so issued, stand in the place of the certificate of incorporation granted by the Registrar under the English Act, which is said to be conclusive evidence that all the requirements of the Act, in order to obtain such certificate have been complied with, and for the purpose of avoiding doubts on the subject, it is now usual to declare as is done by section 77, of the present Act[2] that no letters patent, original or supplementary, shall be held void or voidable on account of any irregularity, etc. These declaratory sections are based apparently on cases which have arisen from time to time, in which the point was matter of dispute, and which are referred to hereafter under the section in question. But such charter, or letters patent, is not necessarily of any legal value,[3] for it may have been obtained by misrepresentation, "or it may have been granted by the crown (or legislature) in excess of its prerogative,[4] and in either case it will be void," and may be annulled on *scire facias*.[5] But until thus annulled must be treated as valid.[6]

(*b*) *Acceptance of.*—The question of the acceptance of a charter also, though little discussed by English writers, may also arise. "The Crown," says Lindley,[7] "has no

[1] *Vide post.*

[2] *Vide post.*

[3] Lindley, 1st Ed., sec. 115.

[4] *Vide supra*, where the question of authority of the Dominion and local legislatures respectively is discussed.

[5] Lindley, sec. 15, Code of Civil Prov. Que., Art. 1034.

[6] Lindley, *qua supra.*

[7] Sec. 114.

power to incorporate persons against their will, nor after a corporation is once established can the Crown force a new charter upon it." This rule obtains much more strongly in the United States, where a charter of incorporation, under the constitution of that country, granted to a private, and more particularly to a commercial association, is regarded as a contract which cannot be interfered with without the consent of the corporators. But in order to complete this contract something more than the mere grant of a charter is said to be required. That is, it must be accepted. "The intention of such a grant of incorporation, is to confer some advantage upon the grantees, but as these advantages may be counterbalanced by the conditions attached to them, the grant must be accepted by a majority at least of those who are intended to be incorporated."[1]

"The question whether a charter has been accepted will depend in a measure upon the circumstances under which it was granted. It has indeed been held, that grants beneficial to corporations may be presumed to have been accepted."[2] And in *Logan* v. *McAllister*,[3] it was *held*, that organizing and acting under a charter was sufficient evidence of acceptance. And the same with amending charters.[4]

In *Perkins* v. *Sanders*,[5] a charter of incorporation provided that the persons therein named, "and also others who are now or may hereafter become associated with them and their successors and assigns, be, and they are hereby created, a body politic and corporate, under the name and style," etc. *Held*, that this provision was not a proposition to create a corporation upon the performance of precedent conditions, but was the creation of the corporation, requiring no other Act but the acceptance of the charter by the corporators, and if they applied for the grant of the charter

[1] Angell & Ames, Corporations, sec. 81.

[2] *Ib.*

[3] 2 Del. ch. 176, Abb. Dig., Vol. II.

[4] *Kenton Co. Ct.* v. *Bank Lick Turnpike Co.*, 10 Bush 529, Ct. of App. Ky. 1874.

[5] Miss. 733.

that was an acceptance in advance. The provision that the capital stock of the company should amount to $60,000, and that it should be divided into shares of $100 each "did not make the subscription of the $60,000, a condition precedent to the organization of the company by the election of directors, a president, and a secretary, it being expressly provided in the charter, that the corporation might make all rules, by-laws, and regulations for the management of its business, property and effects and the transfer of the stock, as to them may seem best." Under these provisions the president and secretary of such company, who were elected before the $60,000 was subscribed to the capital stock, could bind the company by a contract made after such subscription, if it was within the powers granted the corporation.

And where an Act of incorporation has been accepted, and the company organized provisionally thereunder, the subsequent withdrawal of some of the corporators cannot affect the validity of the acceptance.[1] In this country the question of acceptance of a charter does not appear to have arisen, though in the *Canada Car, etc., Co.* v. *Harris*,[2] in which the defendant pleaded to an action for calls, that since his subscription the company had obtained from the Dominion Legislature an Act by which the name, powers, and purposes of the company were changed without his consent, the plea was held bad, for the Act was binding on all the shareholders, whether assenting or not to the application for it, etc. But in any case arising under the present Act, the English rule must undoubtedly prevail, that acting within the scope of its powers, as defined by the British North America Act, "the State may, with or without the consent of the corporators, with or without directly directing compensation to be made, by Act of Parliament, make any alterations, and deal in any way whatever with the constitution, property, rights, franchises of corporations or their members, of every description."[3] And, therefore,

[1] *Bussey* v. *Harper*, 35 Md. 15, Ct. of App., 1871.

[2] 24 C. P. 380, Robinson's Dig. 756.

[3] Brice *Ultra Vires*, 2nd Ed., p. 420.

though it may be assumed that a body of corporators could not be compelled to act under a charter burdened with conditions which they did not contemplate or agree to, the question of acceptance could not be raised in bar of obligations incurred by the application.

(c) *Effect of.*—The general effect then of the issue of the letters patent, is to create the persons therein mentioned a body corporate and politic by the corporate name also therein mentioned. What is such a body corporate and politic has been to some extent explained in the opening chapter, to which may be here added very appropriately the decision of the House of Lords in *Riche* v. *Ashbury*.[1] In that case, the question was as to the right of a company to enter into contracts *ultra vires* of its memorandum, and on appeal, it was *held*, reversing the decision of the Judges below, that the company was not, by registration under the Act, created a corporation *with inherent common law rights*. It might perhaps, be accurate to say, that the company has in general the same rights as an individual would have, but subject to this insuperable limitation that it cannot have or exercise any rights which are inconsistent with the charter under which it exists. And Lord Cranworth, in *Oake* v. *Turquand*,[2] said: "It must be borne in mind that a company formed under the Statute of 1862, is not a mere common law corporation; its rights and liabilities depend in great measure on statutable provisions, and in order fully to understand and interpret them, we must consider not merely the enactments of the Companies Act, 1862, but also of the other Acts previously passed in *pari materia*." And Lord Justice Cairns, speaking of a company incorporated under the Act, said: "The memorandum of association is the charter and limit of the powers of the company just as the articles of association may be said to be its rules of internal government."[3]

[1] L. R., 9 Ex. 224; L. R., 7 H. L. 653.

[2] Law Rep., 2 H. L. 358.

[3] Cox, Joint Stock Cos., p. 33.

10.—General Powers.

10. Subject to the special provisions herein contained respecting Loan Companies,[1] every Company so incorporated may acquire, hold, sell and convey any real estate, requisite for the carrying on of the undertaking of such Company, and shall forthwith become and be invested with all property and rights, real and personal, theretofore held by or for it under any trust created with a view to its incorporation, and with all the powers, privileges and immunities requisite or incidental to the carrying on of its undertaking, as if it were incorporated by a special Act of Parliament, embodying the provisions of this Act and of the letters patent.

(*a*) *Power to hold lands.*—The power to purchase lands, and to hold them for the benefit of themselves and their successors, belonged to corporations generally by the common law.[2]

This power, however, from a very early period was restrained in England by certain Statutes known as the Statutes of Mortmain, which, in effect, prevented any body, corporate or individual, from acquiring lands which might come into mortmain without license of the Crown.

This is the position of common law corporations at the present day. "The license is granted under the privy seal or by letters patent,"[3] and, as a rule, forms part of its charter of incorporation.

This license usually specifies the extent to which the corporation may hold land, but if it does not, that is to say, if it be empowered to hold land generally without any limit being fixed, it is empowered to acquire *ad libitum*.[4]

In the case of Joint Stock Companies, the power is conferred by Statute, as by this section, but only within the limits therein indicated. "Without some provision of this kind (*i.e.*, without the power being so conferred) a commercial corporation, however greatly its enterprise might require and point to the acquisition of lands, would be as

[1] Special provisions, with regard to Loan Companies and forming part of this Act, will be found, *post*.

[2] Blackstone, cap. 18. Of Corporations.

[3] Brice, *ultra vires*, p. 72.

[4] *Ib.*, p. 73.

much within the Statutes of Mortmain as any other kind of corporation."[1] Thus by the civil code of the Province of Quebec it was enacted that the disabilities to which corporations are subject are *inter alia*," those comprised in the general laws of the country respecting mortmains and bodies corporate, prohibiting them from acquiring immoveable property, or property so reputed, without the permission of the Crown, except for certain purposes only, and to a fixed amount and value.[2] And except where the power to hold lands is conferred by legislature or other competent authority, the disability applies to trading companies and corporations as well as others. This was well settled by the judgment of the Privy Council, rendered in 1873 in *The Chaudiere Gold Mining Company* v. *Desbarats*.[3] In that case the action was brought by the "Chaudiere Gold Mining Company of Boston, in the State of Massachusetts, one of the United States of America, a body politic and corporate duly incorporated under the laws of the said State of Massachusetts for the purpose of, and now actually carrying on the business of a mining company there, and at the township of Watford, in the county of Dorchester, and elsewhere in the Province of Quebec." The company purchased from one, Foley, the assignee of Desbarats, some lots of land for the price of twenty thousand dollars, and the action was against Desbarats, as the remote warrantor, for damages on account of defect of title, the plaintiffs having been evicted of the land by subsequent patentees of the Crown. It was contended on behalf of the defendant, that by the law of Lower Canada, corporations could not acquire land, or an interest in it, without the license of the Crown, and consequently could not maintain an action for defect of title to land so acquired. The company replied that the disabling law did not apply to trading corporations whether foreign or domestic, and further, that, if it did embrace them, such corporations were not incapacitated from

[1] Brice, *ultra vires*, p. 74.

[2] Civil Code of Quebec, Art. 366.

[3] 17 L. C. Jur., 275; 4 Rev. Leg., 645.

acquiring, but only from holding lands, and that, in either view, their action was maintainable. The company were defeated on all these points in all the courts, and in delivering the final judgment, their Lordships of the judicial committee of the Privy Council stated the law on which it was based in unmistakeable language. After referring to the French edicts of 1743 and 1749, regarding lands held in mortmain, they cited the opinion of His Honor, Mr. Justice Badgeley, of the Queen's Bench, as containing the correct view of the law under the code on this point and which said: "Whatever doubts might have existed heretofore as to the prohibitive application of the old law with reference to merely trading corporations, they have disappeared since the promulgation of the code which has declared these old law prohibitions to have been, and to be our provincial law. The terms of the code article [1] are too plain for a doubtful construction, and in their generality embrace all corporations (secular, lay or trading) and subject them all to the same disqualifications to acquire real property without the Royal or legislative permission first had and obtained." And their Lordships go on to say, that for these reasons they "think the Court of Queen's Bench was right in holding that the appellants were incapable without the license of the Crown, which it is not averred they possessed, to acquire any title to the lands sold to them by Foley."[2] It may therefore be considered settled law, that in the Province, of Quebec trading companies are like other corporations, subject to the prohibitions concerning the holding of lands without permission of the Crown or legislature as by the present section.

In the United States, according to an eminent writer,[3] the

[1] *Vide supra*, p. 127.

[2] It was also stated in the judgment of their Lordships that the opinion expressed in *Kierzkowski* v. *The Grand Trunk Railway* (before the Code) to the effect that trading corporations were not *gens de mortmain* must be considered overruled by the Code. But one result of this important case was an Act of the Quebec Legislature, empowering British or United States corporations to hold land in that Province for their occupation or the purposes of their business, but no non-trading corporation to hold more than ten acres. *Vide infra.*

[3] 2 Kent. Com., 229.

Statutes of Mortmain have not been generally re-enacted or acted upon. In Pennsylvania, the Supreme Court held the English Statutes of Mortmain to be the law of that State, but this is understood to apply to "dedications of property to superstitious uses, or grants to corporations without a statutory license. But it may be inferred from the special power given to various corporations by Acts of the State Legislatures to hold real estate to a certain limited extent, that statute corporations created for special objects would not have the power to take and hold real estate for purposes wholly foreign to those objects."[1] But in a number of cases held that the question could not be raised collaterally, but must be by direct action.[2]

Companies created under the present Act are by this section authorized to "acquire, hold, sell and convey, any real estate," but only in so far as is "requisite for the carrying on of the undertaking;" and the question naturally arises, what do these rather general terms include? And what would be considered as going beyond such limitation? It is manifest that no definite answer can be given to this question, and that it would have to be decided according to the circumstances of each particular case. Instances, however, are recorded which serve to throw some light upon it.[3]

In England, on the winding up of a company, a landlord's claim was objected to on the ground that the taking of the premises was in excess of the powers of the company, inasmuch as they had let off a portion of the premises which they did not require, to others. *Held*, that the real test of the question was whether they had taken the house for speculation or for their own purposes, and as it could not be shewn to have been taken for other than the actual purposes of the company, the landlord's claim was admitted.[4]

[1] Angell & Ames, Corporations, sec. 149.

[2] Abb. Dig., Vol. II., 473.

[3] These instances would doubtless have been much more numerous, but for the fact that no such restriction is found in the English Act of 1862, and consequently no cases have arisen under it.

[4] Horsey's Claim, L. R., 5 Eq. 561, and see Brice, *Ultra Vires*, p. 108.

And in the United States it was held, that a canal company may purchase more land than the precise quantity needed for the thread of the canal, and divide the excess among the stockholders, or dispose of it in any lawful manner.[1] But held also, that land which a company cannot hold in its own name, it cannot hold in the name of another.[2]

Thus where by its Act of incorporation, a bank was empowered "to hold such lands as were *bona fide* mortgaged or conveyed to it, 'in satisfaction of debts previously contracted in course of its dealings,' the Supreme Court of Pennsylvania adjudged that a conveyance in trust to permit a corporation, which could not accept of the legal title, to receive the rents and profits, or a conveyance that in any shape would entitle the corporation to be put in possession, would be as much a violation of the law as a direct conveyance of the legal title."[3]

And where the company has a limited right to acquire and hold lands, as under the present section, the burden will be upon the person objecting to shew that the acquisition objected to was unnecessary.[4]

(*b*) *Power to mortgage.*—And the power to hold land includes the power to sell or mortgage within the same limits. And in Watts' appeal,[5] *held*, that such power was implied in an express power to the directors to dispose of its land by deed of lease to the extent of securing a proper debt.

(*c*) *Power to acquire other property.*—Immediately upon the issue of the letters patent, *i. e.*, from the day of the date thereof, the company becomes invested *de plano*, and without special transfer or any other formality whatever,

[1] *Spear* v. *Crawford*, 14 Wend. 22, and see Proffatt, Corporations, p. 90.

[2] *Coleman* v. *S. R. T. R. Co.*, 49 Cal. 518.

[3] *Baird* v. *The Bank of Washington*, 11 S. and R. 411; and Angell & Ames, Corporations, sec. 154.

[4] Angell & Ames, sec. 155.

[5] 78 Pa. St. 370, Su. Ct., 1875; see also *infra*.

"with all property and rights, real and personal, theretofore held by or for it under any trust created with a view to its incorporation." The use of the word "by" in this clause would appear at first sight to be redundant, as a company can hardly be said to have held anything *by* itself before it had an existence,[1] and its legal existence dates only from the date of its incorporation. But though a company could have had no rights *which it could of itself have enforced* prior to that period, it may have existed as a company under a voluntary organization, and may have held property and transacted business as such in so far as these were independent of the aid or recognition of the law. And where this is the case, no formal transfer is necessary to vest the title in the corporation.[2] The effect of the incorporation therefore, is to confer upon them that legal recognition, without which they would, as a company, be unable to enforce any rights they might have in, or to, or arising out of such property or transactions. But this is not always the case, and charters of incorporation are frequently obtained before any property or rights are acquired, or contracts entered into, or business transacted, on behalf of the proposed company.

In such case no question can arise as to the effect of the incorporation in this respect. In other cases property is acquired and held by one or more individuals on behalf of the company, until such time as the incorporation shall have been obtained. And as such persons are themselves usually the corporators, or among the number of the corporators, no actual change of possession follows, but simply a change of the title by which the property is held, the holders becoming officers and members of a company *in esse*, instead of trustees for a company yet to be formed. Thus land held for the company could be transferred in the

[1] Thus in New Brunswick where property was conveyed to a company under the name by which it was afterwards incorporated, it was held that nothing passed by the conveyance. *Lloyd* v. *E. & N. A. R'y Co.*, Stevens' Dig., p. 212.

[2] *Americam Silk Works* v. *Soloman*, 6 Thorn 352, Su. Ct., 1875, Abb. Dig., Vol. II.

usual manner, and those holding it would, as we have seen,[1] be held so to transfer it without charge or profit, other than the company, after its organization, may agree to pay them.

Thus also in the Province of Quebec a right in or to an action could be assumed by a *reprise d' instance*.[2] But, *quære*, whether the company under the Code of Procedure of the Province of Quebec, would be obliged to take up the *instance* in a suit commenced by trustees or promoters concerning rights since vested in it by the incorporation.[3] Nor is much light thrown on the question by the section[4] which provides for the issuing of letters patent to companies already incorporated, and which says "that all proceedings may be continued or commenced by or against the new company that might have been continued or commenced by or against the old company." The corresponding section of the English Act[5] is more explicit. It says that "all actions, suits, and other legal proceedings, as may at the time of the registration of the company * * * have been commenced by or against such company, or the public officer or any member thereof, may be continued in the same manner as if such registration had not taken place; nevertheless execution shall not issue against the effects of any individual member of such company upon any judgment, decree, or order, obtained in any action, suit, or proceeding, so commenced as aforesaid," etc.

This clause, however, it must be borne in mind, refers merely to companies which have existed previously under different authority, and obtain registration under the Act of 1862. With regard to companies having no previous corporate existence *quære*.

This section, it will be noticed, says nothing concerning liabilities and obligations incurred on behalf of the com-

[1] *Ubi supra*

[2] *Faribault* v. *St. Louis and the Richelieu Co.*, 3 L. C. Jur. 51.

[3] Code of Civil Procedure Art. 437.

[4] Sec. 80, *post*.

[5] Sec. 105.

pany prior to its incorporation. And this, in accordance with the jurisprudence on the subject, which, as has been seen,[1] does not consider the company liable on contracts entered into with a view to its promotion, except in so far as they are undertaken by the letters patent in each particular case.

(*d*) *Power to transact business.* The incorporation has the effect also of investing the company "with all the powers, privileges and immunities requisite or incidental to the carrying on of its undertaking." The question of the "objects" of the company have already been briefly referred to,[2] but, though intimately related, the *objects* and the *powers* of a company are not quite the same thing. "Few questions," says Thring, "have given rise to more litigation than those relating to the *powers* of a company as contra-distinguished from its *objects*." These powers and objects were at one time very strictly construed; but so much inconvenience resulted from it that a much more liberal interpretation is now given them: and, by a number of decisions, it has been held, "that where an act is conducive to the objects of a company, a Court of Equity will not interfere on the ground that it is not strictly within the letter of the company's constitution."[3] Under such words also as "the doing all such things as are conducive or incidental to the carrying out of the objects of the company," or, as in the present section "all the powers, etc., requisite or incidental to the carrying on of its undertaking," a considerable elasticity has been acquired in the working of a company. But these words, it must be remembered," do not really confer any varying or deviating power,"[4] although where the directors had issued negotiable instruments under authority of these words, it was held, that they were under authority to do so, though without them they might not

[1] *Supra*, p. 71.

[2] *Vide supra*.

[3] Thring, Joint Stock Cos., 3rd Ed., p. 101.

[4] Healy, Joint Stock Companies, p. 21.

have been.[1] And where a corporation entered into a partnership with an individual and there was nothing in the name or charter of the corporation indicating the business to be done by it, and all its stock was held by one person, it was held that the contract of partnership was not *ultra vires*.[2]

No absolute or invariable rule therefore, can be laid down as to what is *ultra vires*, and what is not, what business a company may undertake and what it may not, except, perhaps this, that the business must have some connection with, and contribute in some way, either directly or indirectly, to the carrying out of the objects of the company as specified in its charter, or, if the object of the company is to carry on a certain kind of business, the transactions engaged in, must come reasonably under the head of that business, according to its usage.

Thus, in *Littlewort* v. *Davis*,[3] in the United States, the general rule was laid down that a contract by a corporation outside the purposes of its creation is void for want of power over the subject; but where a corporation contracts with reference to a subject within its power, although in so doing it exceed them, the person with whom it deals, cannot set up such violation of franchise to void the contract.

And in another case said, that the doctrine of *ultra vires* has full application to avoid those contracts only, which involve an attempt to exercise a power which has not been conferred upon the corporation. The abuse, in a particular instance, of a general power which a corporation does possess, cannot be shewn by the corporation to avoid its contract, particularly where one has acted in dealing with the corporation, in reliance on the natural assertion of power implied in assuming to perform the act.[4] And in a number of English cases the general principle was extended to in-

[1] *Peruvian Railway Co* v. *The Thames and Mersey Marine Ins. Co.*, L. R., 2 Ch. 617.

[2] *Allen* v. *Woonsocket Co.*, 11 R. I. 288, and 1 Leg. News, 408.

[3] 50 Miss. 403, Su. Ct., 1874.

[4] *Nat. Bank* v. *Globe Works*, 101 Mass. 57, Su. Ct., 1869.

clude not only such authority as was expressly conferred upon the corporation, but all such as was not expressly denied to it, at least so as to hold it liable on its contracts thus made.[1] But under the present section the power to contract is limited to such as is "requisite or incidental to the carrying on of its undertaking," and it is of importance only to discover, if possible, what these words include.

One of the principal English cases cited on this point is that of *Riche* v. *Ashbury Railway Carriage, etc., Company*, which were empowered, among other things, to carry on the business of "general contractors," but were restrained from purchasing a concession for a railway in a foreign country, and furnishing the means to carry out the object of the concession.[2] And so, also, if the company undertake to carry on the same kind of business or undertaking, in a locality different from that specified in their charter, they may be restrained.[3]

But a company created for the purpose of mining and transporting coal, with power to purchase goods, chattels, and effects needful for that purpose, has power to purchase and use a steamboat to transport and deliver coal.[4]

In the United States, however, where a company incorporated for the purpose of keeping a hose-carriage and hose with which to extinguish fires, entered into a contract with the owners of a steamboat, that the latter should furnish such boat and convey the company and its friends on an excursion of pleasure and profit, it was held to be beyond the objects contemplated by the incorporation, and that the company could not recover damages from the owner of the boat for a breach of the contract.[5] And where a

[1] Brice, *ultra vires*, 2nd Ed., p. 58. Where there is simply a defect of power in a corporation to make a particular contract, but such contract is not in violation of the charter or of any statute prohibiting it; and the corporation has, by its promises, induced a party to spend money to perform his part thereof, the corporation is liable on the contract. *State Board of Agriculture* v. *Citizens R. R. Co.*, 47 Ind. 407, Su. Ct., 1874

[2] Brice, *ultra vires*, p. 154.

[3] *Ib.*, p. 155.

[4] *Ib.*, p. 156.

[5] *Screven Hose Co.* v. *Philpot*, 53 Ga. 625, Su. Ct., 1873, Abb. Dig., Vol. II.

company was organized for the purpose of selling books, principally a city directory, and one *G.* published a similar directory, which he sold for a less price, and the trustees, in order to prevent the future publication of *G.'s* directory, entered into an agreement with *G.'s* printer, by which the company agreed to purchase from the printer half of *G.'s* overdue notes for a certain sum, and for another certain sum, the printer agreed to publish no more directories for *G.*, and to sue upon and obtain judgment on the indebtedness due from *G.* in order to ruin *G.'s* credit, the agreement was held to be *ultra vires* and void, and that an injunction might be granted in a suit by a trustee and stockholder of the corporation in order to restrain his co-trustees from using the funds of the corporation to carry such agreement into effect.

And where the corporate powers of a manufacturing company were defined as being the manufacturing every variety of firearms, and other implements of war applicable to the use of firearms, and all kinds of machinery adapted to the construction thereof, it was held, that the manufacture and sale of circular railroad locks were not included.[2]

And in Upper Canada, *held*, on demurrer to a plea setting up the absence of the corporate seal, that a parol agreement entered into by "the duly authorized agent of an incorporated insurance company to refer to arbitration the question of the legal liability of said company to bear any portion of the expense of raising and repairing a vessel insured by them and subsequently lost, was not binding upon the company, as not being a contract relating to the purposes for which the company was incorporated.[3] And where a company was incorporated by Acts of the Legislature of Canada and the State of New York respectively, for the purpose of constructing a suspension bridge across the river

[1] *Colles* v. *Trow City Directory Co.*, 18 N. Y. Su. Ct. 397, 1877, Abb. Dig., Vol. II.

[2] *Whitney Arms Co.* v. *Barlow*, 38 N. Y. 554, Su. Ct., 1875, Abb. Dig., Vol. II.

[3] *Calvin* v. *Prov. Ins. Co.*, 20 C. P. 267; Robinson's Dig. 770.

Niagara for railroad and other purposes, with compulsory powers as to the taking of lands, etc., and having the right to impose tolls for the user of the bridge, etc., and the two companies so incorporated joined in a lease of the upper or railway floor of the bridge, for the term of their charter, to a railway company, to be for their exclusive use and the use of such other railway companies as the lessees might arrange with, it was *held*, that such assignment was *ultra vires* and void.[1] But where an insurance company was by its charter authorized to hold real estate for the immediate accommodation of the company, "or such as shall have been *bona fide* mortgaged to it by way of security, or conveyed to it in satisfaction of debts previously contracted in the course of its dealings, or purchased at sale upon judgments which shall have been obtained for such debts," and having sold and conveyed a vessel took from them a mortgage on real estate to secure the purchase money, this was *held*, to be a transaction within the Act of incorporation, the price of the vessel being a debt existing previously to the execution of the mortgages.[2]

Again, it is said that corporations may have by implication, power to engage in transactions outside their own proper business, "such transactions having become by change of circumstances essential to the corporate well being."[3] The judgment, however, from which this is deduced, does not appear from the special circumstances which gave rise to it, to have been intended to be drawn into a precedent, nor do those circumstances appear to warrant a general rule.[4]

(*e*) *Power to Amalgamate.*—Another question which is much discussed under this head is the power of a company to amalgamate with another, so as to lose its original iden-

[1] *Attorney-Gen.* v. *Niagara Falls International Bridge Co.*, 20 Chy. 34; Robinson's Dig. 771.

[2] *Western Assurance Co.* v. *Taylor*, 9 Chy. 471; Robinson's Dig. 770.

[3] Brice, *ultra vires*, p. 156, and see case there cited.

[4] Under the present Act a similar change of circumstances would appear to warrant only an application for an extension of powers. *Vide post*, sec. 14.

tity and form with that other a new corporation. The result of the cases is that a company possesses no implied power to this effect. That unless there is an express provision in that behalf, either in the company's charter or in the Act under which its charter was obtained, no such arrangement can be entered into by the majority so as to bind the minority.

The leading authority on this subject[1] lays down the following rules, that—

1. "Corporations may by means of, but cannot without a very clear power in that behalf, directly transfer their legal entity to another corporation."

Nor even indirectly, according to a recent decision.[2] In that case the B. N. was a life and fire insurance company, with a capital divided into £10 shares. By its deed of settlement it was provided, that the capital and funds of the company should alone be answerable for claims on the company, and that members should not be liable beyond the amount of their shares. There was a provision enabling two general meetings to alter and extend the objects of the association, and enabling an extraordinary general meeting to acquire the business of any other association of a similar nature. The company passed a resolution to acquire the business of the B. C. Association, which was a company of similar objects, with a capital divided into £50 shares, on which £5 per share had been paid up. The deed of settlement of the B. C. contained no power to transfer its business, so the purchase was completed by certain trustees on behalf of the B. N. taking assignments of the shares in the B. C. from the individual proprietors. By a subsequent deed these trustees purported to transfer the shares to the B. N., taking a covenant from the B. N. to indemnify them from all liability. The B. N. was thereupon entered in the list of shareholders in the B. C. This

[1] Brice, *ultra vires*, p. 711.

[2] *E. p.* British Nation Life Assurance Association, 27 W. R. 88; L. R., 8 Ch. D. 679; 48 Law J. Rep. 118; 39 L. T. 136.

deed was never submitted to the sanction of a general meeting. The B. C. was subsequently wound up. *Held*, that the transfer of the shares to the company was *ultra vires*, and that the company could not be put on the list of contributories.

2. "Corporations cannot amalgamate so as to transfer their members without nor *semble* even with a very clear power in this behalf."

The importance of these latter words seems to demand some explanation. The English Act, 1862, contains a provision[1] that when a company is, or is about to be voluntarily wound up, and it is proposed to transfer the whole or a portion of its business to another company, the company so to be wound up may, by special resolution, agree to receive in compensation or part compensation for such transfer of its business, shares, policies, or other like interests in such other company for the purpose of distribution among its own members, or may enter into any other arrangement whereby its own members may, in lieu of receiving cash, shares, policies, or other like interests, participate in the profits of the purchasing company. And such arrangement will be binding on the members of the company, subject to this proviso, that if any member of the company being wound up, who has not voted in favour of the special resolution passed by the company of which he is a member, expresses his dissent in writing, not later than seven days after the date of the meeting at which such special resolution was passed, such dissentient member may require one of two things, viz., either that the company abstain from carrying such resolution into effect, or purchase the interest held by such dissentient member at a value to be fixed, etc. Under this section it was *held*,[2] that a dissentient shareholder does not, by failing to express his dissent within the seven days limited by the section, become thereby compelled to take shares in the new or

[1] Sec. 161

[2] Bank of Hindustan, L. R. Case, 13 W. R., 883; 12 L. T. 690.

purchasing company. But if he do not so express his dissent, he cannot take advantage of the provision for the purchase of his interest, but must submit to lose his shares altogether if he refuse to accept the new shares. This is what is intended by the above statement, as exemplified in another case,[1] in which the articles of association of a company provided that the directors might, "with the consent of an extraordinary general meeting, transfer and sell the business of the company, or purchase or amalgamate with the business of any other company of a like nature," and in which it was *held*, that on amalgamation, a dissentient member could not be compelled to become a member in a new company with more extended objects, or (*semble*) in any new company at all.

So that neither under the charter of a company, or under such a provision of law as that cited above, can a shareholder of a company be compelled to take shares in, or become in any sense a member in a different concern, either by virtue of an arrangement to amalgamate, or sell the property of the company to which he belongs, or any other arrangement whatever. And if they cannot be compelled to enter into a new arrangement under such circumstances *a fortiori*, they cannot be so compelled under the present Act, which makes no provision for the amalgamation of companies formed under it, otherwise than by applying for an extension of powers, as provided by section 14, *et seq.*[2]

But there is nothing to prevent a company entering into such an arrangement with the unanimous consent of its members. That is to say, that such a proceeding will hold good so long as none of the members of the company take proceedings to set it aside. But as, without special power, such an arrangement would be void a company could not proceed safely to enter into and effect such an arrangement without the consent of all the mem-

[1] *Ex. p.* Bagshaw, L. R., 4 Eq., 341, and see Brice, *ultra vires*, 707, and Buckley, Joint Stock Companies, p. 319.

[2] *Vide post.*

bers first had and obtained.[1] But when this is obtained no one else is entitled to object. For unless there is an express agreement or provision of some sort to the contrary, "a corporation not bankrupt may deal with its property as it pleases, without regard to the wishes of its creditors."[2] But though a creditor cannot prevent an arrangement of this kind from being carried into effect, where the company debtor is still solvent, he is not thereby compelled to accept the new concern as his debtor. In other words, there is no novation of his claim. This was exemplified in several English cases,[3] in which also it was *held*, that (the companies being insurance companies) though the creditors (policy holders) had paid premiums and taken receipts at the office of the new concern and with the receipt heading, that this did not amount to acquiescence so as to constitute novation of their claim.

And the effect of such an arrangement has given rise to several interesting questions. Thus, in the State of Indiana it was held, that the consolidation of two corporations extinguishes the original corporation and mingles the powers of both into a new one.

But in another case *held*, that the consolidation of two companies does not necessarily work the dissolution of both and the creation of a new corporation. The effect of the change depends upon the legislative intent manifested in the Statute under which the consolidation took place.[4] But

[1] Brice, *ultra vires*, p. 715. In *Dobie* v. *The Board of Management of the Temporalities Fund of the Presbyterian Church*, already alluded to, Ramsay, J., said: So the four Presbyterian Churches or any of their number, whether a majority or a minority, had a perfect right to form an association and call themselves "The Presbyterian Church in Canada," without the intervention or permission of any Legislature; but such numbers had no right to take the trust funds, and make them over to another body, nor could their adherence to a new body annihilate the old one, and so deprive its remaining members of their interest in such funds. It is evident from the ruling in Bourgouin's case, already cited, that incorporated companies could not do so, and I fancy an incorporated association would not have greater powers.

[2] Brice, *ultra vires*, p. 723; but *semble* that, if it could be shown to be bankrupt, and that the arrangement was about to be attempted to avoid that result, it could be restrained at the suit of a creditor.

[3] Referred to by Brice, p. 724, *et seq.*

[4] *I. C. & L. R. R.* v. *Jones*, Su. Ct., Ind. 351; Withrow's Cases

where two corporations chartered before the passage of a general law of the State, reserving to the legislature the right to alter or repeal all corporate charters, were consolidated by virtue of an Act passed after such law took effect, it was *held*, that the old corporations were dissolved, and that the new one formed by the consolidation came into existence subject to the general law.[1] And in the absence of any express provision to the contrary, whenever one corporation goes entirely out of existence by being annexed to or merged in another, the subsisting corporation will be entitled to all the property, and answerable for all the liabilities of the extinguished one.[2] But where one company was amalgamated with another during the pending of a suit against it, it was *held* improper to permit the plaintiff to take a judgment against the company in its new name, without taking proper steps to bring the new company as such before the court, and a judgment so taken out ought to be set aside.[3] And to warrant a consolidated corporation suing upon a subscription to one of the old companies, a proceeding of consolidation conformable to the Statute must be proved.[4] Nor has a corporation formed by the amalgamation of previously existing companies any power to declare a dividend, as such, of the earnings made prior to the consolidation by one of the companies which was merged in the consolidation, or dividend on the stock of that company out of the earnings of the consolidated one, and the courts will not compel it to declare such a dividend.[5] But where after such consolidation the name of a Wisconsin corporation was, by an act of the Legislature of the State of Illinois, also made the name of the Illinois corporation, and a mortgage was made in the corporate name by the officers

[1] *Central R. R. Co.* v. *Georgia*, 92 U. S. Su. Ct., 665; Abb. Dig., Vol. II.

[2] *Shields* v. *Ohio*, 95 U. S. Su. Ct. 319; Abb. Dig., Vol. II.

[3] *Thompson* v. *Abbott*, 61 Mo. 176, Su. Ct., 1875; *Miller* v. *Lancaster*, 5 Coldw. 514, Su. Ct. Tenn.

[4] *Setma, etc., R. R Co.* v. *Harbin*, 40 Ga. 706, Su. Ct., 1870; Abb. Dig., Vol. II.

[5] *Penn. R. R. Co.* v. *Thorp*, 28 Mich. 506, and *Mansfield R. R. Co.* v. *Drinker*, 30 Mich. 124, Su. Ct., 1874; Abb. Dig., Vol. II.

[5] *Chase* v. *Vanderbilt*, 37 N. Y. S. C. 334, 344, 1874; Abb. Dig., Vol. II.

of the consolidated company, conveying the property of the Illinois corporation, the mortgage, it was *held*, should be considered legal and valid as the sole and separate mortgage of the Illinois corporation.[1] And in Upper Canada, where a Statute authorized two companies to unite into one company by either a complete or partial union, and either of joint or separate, or absolute or limited liability to third parties, and the companies agreed to an absolute union and made no provision for limiting the liability of the new company in respect of past transactions of the old companies, it was *held*, that the new company thereby assumed all the liabilities of the old company to third persons.[2]

(*f*) *Power to employ agents.* Another power incidental to every corporation is that of employing agents to carry on its work.

In the United States it has been held,[3] that an explicit authority to employ agents to do whatever is within the general design of the corporation, need not be conferred by the charter, in order to warrant making such appointments."

(*g*) *Power to deal in stock.* In England the rule appears to be that in the absence of special provision a corporation may deal in the stock of other corporations, provided that such dealings, as in all other dealings, is in furtherance of its objects, but not in its own stock.[4] The latter part of the proposition was laid down very distinctly in several leading cases,[5] but especially *in re* Zuluetas' claim,[6] in which it was said that in the absence of a clear and distinct power for that purpose, such purchase is *ultra vires*, though the company may be empowered to deal in shares

[1] *The Racine and Miss. R. R. Co.* v. *The Farmers' Loan and Trust Co.*, Su. Ct. Ill. 441; Withrow's Corporation Cases.

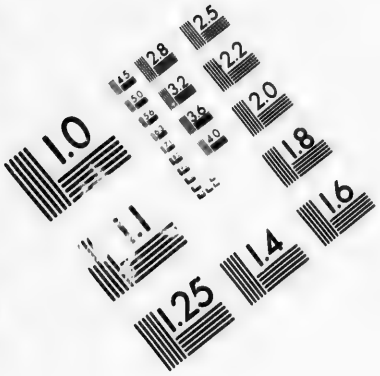
[2] *Cayley* v. *C. P. & M. R. R. & M. Co.*, 14 Ch. 571; Robinson's Dig. 783.

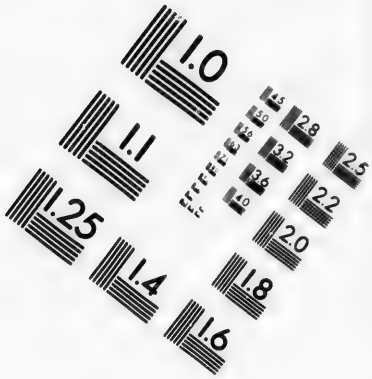
[3] *Kitchen* v. *Cape Guardian, etc., R. R. Co.*, 59 Mo. 514; Abb. Dig., Vol. II.

[4] Brice, *ultra vires*, p. 173, et. seq.

[5] Buckley, Joint Stock Companies, p. 69.

[6] L. R., 5 Ch. 444.





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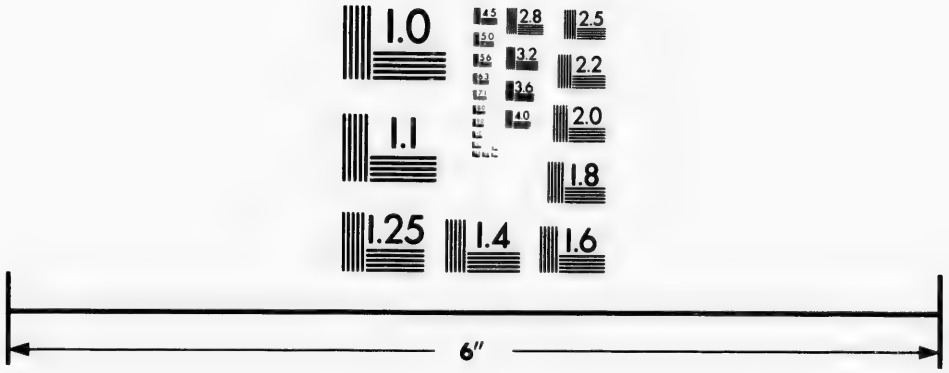

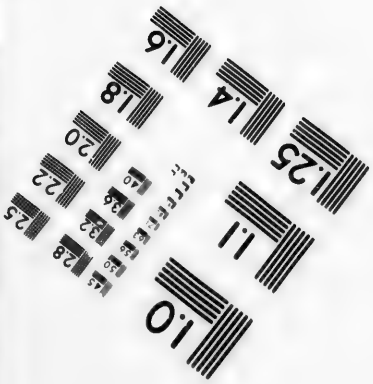

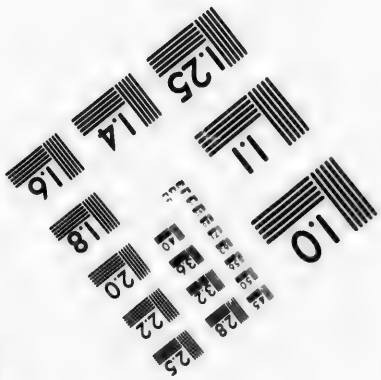

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of joint stock companies generally. But with regard to the dealing by a company in the shares of other companies, it was said by Selwin, J.P., *in re* Asiatic Banking Corporation:[1] "As to the capacity of a trading corporation to accept shares in another trading corporation, it is sufficient for me to say, that I entirely agree with the judgment of Lord Cairns, in the case of Barned's Banking Co., viz.: that there is not either by the common or Statute law, anything to prohibit one trading corporation from taking or accepting shares in another trading corporation. There may, of course, be circumstances which render it improper to do so, having regard to its constitution," etc.[2]

The rule in the United States, however, appears to be the reverse of this, viz. that in the absence of provision a company may deal in its own shares, but not in the shares of other companies.[3]

By the present Act, no provision is made concerning either, except the power to forfeit shares for non-payment of calls,[4] can be so termed. But this can scarcely be, as the holder is not thereby relieved from liability, and, therefore, the forfeiture of shares can in no way be held to be either purchasing or dealing in its own shares.

(*h*) *Power of suing and being sued.* The faculty of suing and being sued is incidental to every legally created corporation, and may be held to be included in the terms of the section as part of the "powers requisite to the carrying on of the undertaking." The right of action in particular cases is referred to in several parts of the Statute, and especially the right of action between the corporation itself

[1] L. R., 4 Ch. 252, 257.

[2] See Brice, p. 174.

[3] *Ib.*, p. 176, and Angell & Ames, sec. 280. But in *Brewster* v. *Hartley* held, that a corporation has not the power either directly or by the intervention of a trustee, a stockholder in its own shares. 37 Cal. 15, Su. Ct., 1869.

[4] By the Quebec Act however, there is a prohibition to deal in the shares of other companies. *Vide post.*

and its members,[1] the manner in which action may be brought and the proof of formalities required in such actions. And this right, it appears, is not confined to the province, state or county in which the company was created. According to a number of decisions quoted by Abbott,[2] it is laid down that "in the absence of restraining Statutes, corporations created by the laws of any one state are competent, as artificial persons, to bring suit in the courts of other states.[3]

(*i*) *Change of Venue.* And in the *Commercial Insurance Company* v. *Mehlman*, decided in the Supreme Court of Illinois, it was *held*, that "a corporation equally with individuals is entitled to a change of venue, when, by a verified petition, it brings itself within the provision of the Statute, and any recognized officer may be regarded as a party to the record for the purpose of making the necessary affidavit.[4]

And, in *Cataraqui Cemetry Company* v. *Burrow*,[5] decided in Ontario, it was said, that "a suit brought by an incorporated company will be removed (into a higher court?) if it be shewn that difficult questions of law will arise as to the powers conferred by their act of incorporation.

(*j*) *Ultra Vires Transactions.* In any of these cases whatever is done by a company which cannot be shewn to be in some way within its powers, either express or implied, is not only voidable, but absolutely void,[6] and may be set aside at the suit of a single shareholder.[7]

11. Change of Constitution.

The constitution of a joint stock company, as established by its charter, may be altered at any time by supplementary

[1] *Vide post*, sec. 70.

[2] Vol. II., p. 673.

[3] But see this point more fully discussed. *Supra pp.* 86 and 105, *et seq.*

[4] *Vide* Abbott's Dig., Vol. II.

[5] Robinson's Dig., p. 779.

[6] Brice, *ultra vires*, 2nd Ed., p. 176.

[7] *Car* v. *Ottawa Agricultural Ins. Co.*, 22 Grant (Upp. Can. Chan. 1875) 512, followed by Brice, 2nd Ed., 842; Angell & Ames, 390.

letters patent, which, however, can only be obtained by observance of such formalities as are prescribed for the original. Thus the name of the company may be changed.

11. In case it should be made to appear, to the satisfaction of the Governor in Council, that the name of any Company (whether given by the original or by supplementary letters patent, or on amalgamation) incorporated under the provisions of this Act, is the same as the name of an existing incorporated or unincorporated Company, or so similar thereto as to be liable to be confounded therewith, it shall be lawful for the Governor in Council to direct the issue of supplementary letters patent, reciting the former letters and changing the name of the Company to some other name to be set forth in the supplementary letters patent.

12. When a Company incorporated under the provisions of this Act is desirous of adopting another name, the Governor in Council, upon being satisfied that the change desired is not for any improper purpose, may direct the issue of supplementary letters patent, reciting the former letters and changing the name of the Company to some other name, to be set forth in the supplementary letters patent.

13. No alteration of its name under the two last preceding sections shall affect the rights or obligations of the Company, and all proceedings may be continued or commenced by or against the Company by its new name that might have been continued or commenced by or against the Company by its former name.

(*a*) *Change of Name.*—The question of a confusion of names has been referred to in a former part of this chapter,[1] but several things may be observed with regard to these sections.

It would appear from the terms of the first one that the Governor in Council may, *ex mere motu*, whenever it appears that there is a confusion of names or a danger of such confusion, issue supplementary letters patent, changing the name of the company to some other name set forth therein. The company whose name is thus changed must be the youngest, that is to say, the one whose charter was obtained subsequent to the one with whom it is in danger of being confounded. For, as the name of a company is not only a matter of considerable importance in most cases, but part of its vested and corporate rights, it cannot be disturbed in it by any subsequent organization.

[1] *Vide supra, p.* 102.

Thus in *Holmes* v. *Holmes Manufacturing Co.*, in the United States,[1] *held*, that where the name of a manufacturing corporation has been used to designate the origin and ownership of the goods manufactured by it, such use of its name will be protected to the same extent and upon the same principle that individuals are protected in the use of trade marks.

But it would appear also that the company charged with interference in this respect must have notice of such change, and opportunity of defending its right to the use of such name, before being deprived of it.[2]

The company itself also, when restrained from the use of a name, or from any other reason desirous of changing it, may obtain supplementary letters to that end; but under the English system the change of name was held not to be complete until it had been made on the register, and a certificate of incorporation, altered accordingly, had been issued by the Registrar. This was the decision in the case of *Shackleford, Ford & Co.*, v. *Dangerfield*. On the 18th of July, 1867, the company passed a resolution to change its name, which was confirmed on the 9th of August. On the 23rd of the same month the directors made a call in the old name of the company. On the 7th of September the approval of the change of name by the Board of Trade was obtained, and on the 13th, notice of the call in the new name was given to the shareholders. On the 31st of December, same year, an action in the old name was brought against a shareholder who knew of the proposed change of name, to recover the amount of the call. The certificate of incorporation in the new name was not issued until the 13th of February, 1868. *Held*, that the action was properly brought in the old name of the company, and

[1] 37 Conn. 278, Ct. of Err., 1870; Abb. Dig., Vol. II.

[2] The English Act does not provide for a change of name except on the application of the Company itself, but it prohibits the use of a name identical with that by which a subsisting company is already registered or so nearly resembling the same as to be calculated to deceive, and injunction would be granted at common law to restrain it from the use of such name, when it would be compelled to apply for a change. The Quebec Act makes no provision for a change of name.

that the notice of call in the new name was sufficient, as it in fact gave the defendant notice that the call had been made.[1]

In order to provide against a fraudulent use being made of this privilege, as also to avoid doubt and confusion in the transactions of the company, it is enacted that no change of name "shall affect the rights or obligations of the company, and all proceedings may be continued or commenced by or against the company by its new name that might have been continued or commenced by or against the company by its former name." But an incorporated company has no power to change its name without the authority of the legislature.[2]

14. The Company may, from time to time, by a resolution passed by a vote of at least two-thirds in value of the total shareholders of the Company, at a special general meeting called for the purpose, authorize the Directors to apply for supplementary letters patent extending the powers of the Company to such other purposes or objects, within the purview of this Act, as may be defined in the resolution.

15. The Directors may, at any time within six months after the passing of any such resolution, petition the Governor, through the Secretary of State of Canada, for the issue of such supplementary letters patent:

2. The applicants for such supplementary letters patent must give at least one month's previous notice in the *Canada Gazette* of their intention to apply for the same, stating therein the purposes or objects to which it is desired to extend the powers of the Company.

16. Before such supplementary letters patent are issued, the applicants must establish to the satisfaction of the Secretary of State or of such other officer as may be charged by the Governor in Council to report thereon, the due passing of the resolution authorizing the application and the sufficiency of their notice and petition; and to that end the Secretary of State or such other officer, shall take and keep of record any requisite evidence, in writing, by solemn declaration under the Act thirty-seventh Victoria (1874), chapter thirty-seven, above mentioned, or by oath or affirmation.

17. Upon due proof so made, the Governor in Council may grant supplementary letters patent under the great seal, extending the powers of the Company to all or any of the objects defined in the resolution; and notice thereof shall be forthwith given by the Secretary of State, in the *Canada Gazette*, in the form Schedule C. appended to this Act; and thereupon, from the date of the supplementary letters patent, the undertaking of the

[1] Law Rep., 3 C. P. 407.

[2] Stevens' Dig., N. B. Rep., p. 339.

Company shall extend to and include the other purposes or objects set out in the supplementary letters patent, as fully as if such other purposes or objects were mentioned in the original letters patent.

(*b*) *Extension of Powers.* These clauses, though apparently unobjectionable and calculated to be of service in certain cases, appear also to be peculiar to this Act. No such provision is found in the Canada Act of 1869, to which this succeeded, nor in the Acts of Ontario or Quebec, nor is such a provision found in the English Act, although the process by which such a change might be effected is so much simpler than that laid down in these sections. This, however, may be one reason why no such provision is made; while the section in question appears to be framed with a view to discouraging too hasty or too frequent use of the powers there given. Nor should such powers be used at any time, save with extreme caution. It may easily be conceived that a company like an individual, may be tempted to launch out into enterprises other than those for which it was formed, and which it has been accustomed to carry on. Either in prosperity or adversity it may be allured by flattering appearances or driven by desperate hopes—in the former case, to add to its gains; in the latter, to retrieve its failing fortunes. With individuals thus weak or hardy, by whom only themselves or those immediately depending upon them can suffer, the consequences may be, and often are, disastrous and deplorable enough, but to a company, risking not only its own money, not only the money and fortunes of those, the minority, who may disagree with the wisdom of such a step, but the money of others, very frequently who are powerless to aid themselves, the consequences, in case of failure, will be necessarily much worse. Therefore it is, without doubt, that while providing for an emergency in which it may be considered desirable to extend the operations of the company to other objects, it is, at the same time, provided, that such extension must be approved of, first by a vote of at least two thirds in value of the total shareholders of the company, taken at a general meeting called for the purpose,

and afterwards by the governor in council, upon due proof that all the formalities have been complied with, and that it is desirable that such extension should be granted. And, as an additional safeguard, it is provided that a period of six months must elapse from the time of the passing of the resolution, before the petition may be presented, thus giving to all interested ample opportunity for deliberation, for inquiry, and for objection if any were found.

For it cannot be doubted that even after the observance of all these formalities the minority of those interested, and even a single shareholder, would be entitled to be heard in opposition to the granting of such extension. Under the English law, which makes no such provision, a court of equity will grant an injunction in such cases at the suit of any single shareholder.[1]

And this, though a general meeting has given its assent, and every other member of the company is in favor of it.[2] But after the petition and the supplementary letters patent have been granted, an injunction clearly would not hold, any more than it would to restrain the company from the legitimate use of the powers originally granted. This is clear also from the injunction Act of Quebec,[3] which provides for the issue of a writ "whenever a corporation acts or takes any proceeding beyond its power, *or without having fulfilled the formalities prescribed by law.*" And the regularity of such formalities cannot be made the subject of inquiry after the granting of the letters patent.[4]

It would appear, from a comparison of the first and second clauses of sec. 15, that the month's notice of petition may form part of and be included in the six months' delay from the passing of the resolution.

18. The Company may, by by-law, increase to not more than fifteen, or decrease to not less than three the number of its Directors, or change the

[1] Thring, Joint Stock Cos., 3rd Ed., p. 98.
[2] *Ibid.*
[3] 41 Vic., cap. 14.
[4] *Vide supra*, p. 122.

Company's chief place of business in Canada; provided that no by-law for either of the said purposes shall be valid or acted upon, unless it be sanctioned by a vote of not less than two-thirds in value of the shareholders present in person or represented by proxy, at a general meeting duly called for considering the by-law, nor until a copy of such by-law, certified under the seal of the Company, has been deposited with the Secretary of State, and has also been published in the *Canada Gazette*.

(*c*) *Change of Number of Directors.*—The object of this section, as far as it refers to the number of directors, is not very evident. For as we have seen by section 4, sub-section 6, the exact number of the directors is not made a fundamental part of the constitution of the company. Indeed the same liberal margin is there laid down as expressed in the present section, and again by section 26. And as we shall see further on, under section 32, the directors themselves have the power to pass a by-law fixing their number within the same margin, subject to confirmation at a general meeting of shareholders.

This clause therefore would appear to be in conflict with section 32, which provides for the regulation of the number of directors without the formalities here prescribed. These formalities, however, are not those prescribed for the obtaining of letters patent, but simply the publication of such by-law in the *Canada Gazette*, and the deposit of a certified copy thereof with the Secretary of State. Under the English Act the

(*d*) *Change of the chief place of business*—Is effected by application to the Board of Trade, which grants its certificate to that effect, and notes at the foot of the memorandum of association the place to which the change is made, copies of which certificate and memorandum are thereupon forwarded to the registrar of the place to which the registered office of the company is to be transferred. Notice of such change must first be published for four consecutive weeks in a newspaper circulating in the district in which the registered office is situate, and also in the official *Gazette*. The Board of Trade are also bound to hear any objections which may be urged to the change before granting the cer-

tificate. As a change of the location of the chief office and place of business of a company is a matter of considerable importance, not only to the company and its members, but to all those having dealings or business of any kind with it, it would appear to be an omission in the section, that no provision is made obliging the company to announce such change in an ordinary newspaper as well as in the official *Gazette*, the publicity of which is not very great.

The section, though found *verbatim* in the Ontario Act, is entirely wanting in the Quebec Statute.

19. The Directors of the Company, other than a loan company, may at any time make a by-law sub-dividing the existing shares into shares of a smaller amount.

(*e*) *Sub-division of Shares.*—The amount, or nominal value of each share being fixed by the letters patent, any change thereof may be properly considered a change in the constitution of the company. Such a change is not provided for by all the Acts to which reference has been made, except that of the Province of Quebec. The provision in the English law in the amending Act of 1867,[1] which also provides that "in the sub-division of the existing shares, the proportion between the amount which is paid, and the amount (if any) which is unpaid on each share of reduced amount, shall be the same as it was in the case of the existing share or shares from which the share of the reduced amount is derived.

It also provides that each copy of the memorandum of association issued after the passing of such resolution, shall be in accordance with such resolution, subject to a penalty of one pound for each copy.

Under the present section there is no limit either to the extent or the time at which such change may be made, or any other formality prescribed for the protection of creditors who, as stated by Lord Cairns, *in re* The Financial Corpora-

[1] *Vide* Act, 1867, secs. 21-22.

tion,[1] may, upon a winding up, be left with the unpaid capital of the company scattered through such a number of hands, that the sum recoverable from each would not pay for the trouble and expense of collection.

20. The Directors of the Company, at any time after the whole capital stock of the Company shall have been taken up and fifty per cent. thereon paid-up, but not sooner, may make a by-law for increasing the capital stock of the Company to any amount which they may consider requisite in order to the due carrying out of the objects of the Company:

2. Such by-law shall declare the number of the shares of the new stock; and may prescribe the manner in which the same shall be allotted; and in default of its so doing, the control of such allotment shall be held to vest absolutely in the Directors.

(*f*) *Increase of Capital.* Provision for the increase of the capital stock of a company is common to all the Acts.

By the English Act,[2] the only formalities are the passing of a special resolution, altering the memorandum of association to that effect, and the giving notice to the Registrar within fifteen days after the resolution has been adopted.

By the schedule of regulations for the working of Joint Stock Companies appended to the Act, it is further provided however, that all new shares shall be offered to the members in proportion to the existing shares held by them, such offer to be made by notice, specifying the number of shares to which each member is entitled, and limiting a time within which, if the offer is not accepted, it will be deemed to be declined. No such provision is found in the Canadian Acts, but a stipulation to that effect is generally made part of the by-law to increase the capital, as, without doubt, is the right of the company to do.

On the other hand, the English Act lays down no conditions precedent to the adoption of such a resolution, such as are contained in this section, which stipulates that all the previous stock must be allotted and half[3] of it paid up before asking for an increase.

[1] L. R., 2 Ch. 714, 733.

[2] Secs. 12 and 34.

[3] By the Quebec Act the whole of the stock must be paid in. Q., 31 Vic., cap. 25, sec. 9.

The increase is applied for and obtained with the same formalities and delays as have already been described for obtaining extension of the company's powers, the object being, doubtless, as in that case, to provide against too hasty legislation on the part of the company, and to give those who may be opposed to such a step an opportunity of protecting themselves against it.

"The by-law," says the second clause of the section, "may prescribe the manner in which the same shall be allotted." This is in accordance with what has been already stated concerning offering the new shares to the old members preferentially to strangers.

(*g*) *Preference shares.* And there appears to be very little doubt but that such new shares may be issued with right of preference, or privilege, to the shareholder as regards dividends, etc., if so provided by the by-law, and supplementary letters patent. But not otherwise, according to the English cases, wherein it has been decided that, in the absence of (express) authority for the purpose, the issue of preference shares is *ultra vires*, as it is an implied condition that the shareholders are entitled to rank equally in respect of dividend.[2] But where the articles provided that new shares might be issued with such privileges as the company should think fit, there was power to issue preference shares with privilege, "so far as regards participation in dividends or any other right whatever."[3]

These cases, it will be understood, proceed upon a system under which nothing is necessary to such an alteration of the constitution of the company, but a resolution of the company itself; nothing is binding on the company but its original agreement and the will of a majority of its members. The government of a company, under the English sys-

[1] *Hutton* v. *Scarborough Hotel Co.*, 2 Dr. & Sm, 514; 4 D. J. & S. 672.
[2] Buckley's Companies Acts, p. 141.
[3] *Harrison* v. *Mexican Railway Co.*, L. R., 19 Eq. 358.

tain, is essentially autocratic, and therefore, it is the more necessary that the terms of its original agreement be the more strictly interpreted and the more rigidly adhered to. Between it and a company formed under the Canadian Acts referred to, there is a great difference in this respect. The latter is constituted and created by special authority, and any fundamental change in that constitution must be authorized and approved of by the same authority. The authority by which such alteration is made therefore, being the same as that by which the company was created, a stipulation in the by-law that such new shares should carry a preference or privilege on the earnings of the company, would be brought within the company's powers, and confirmed.[1]

21. The Directors of the Company, at any time, may make a by-law for decreasing the capital stock of the Company to any amount which they may consider sufficient in order to the due carrying out of the undertaking of the Company, and advisable: Provided that the capital stock of a Loan Company shall never be decreased to less than one hundred thousand dollars:

2. Such by-law shall declare the number and value of the shares of the stock as so decreased, and the allotment thereof, or the rule or rules by which the same shall be made.

22. But no by-law for increasing or decreasing the capital stock of the Company, or sub-dividing the shares, shall have any force or effect whatever, until after it shall have been sanctioned by a vote of not less than two-thirds in value of all the shareholders of the Company, at a general meeting of the Company duly called for considering the same, and afterwards confirmed by supplementary letters patent.

2. The liability of shareholders to persons who were, at the time of the reduction of the capital, creditors of the Company, shall remain as though the capital had not been decreased.

(*h*) *Reduction of Capital.* It may be found desirable to reduce the nominal capital of a company, either

Because the nominal capital is greater than the requirements of the company, or

Because the actual existing capital as represented by the assets of a company, has become so much less than the nom-

[1] As to the effect of such preference. See *infra*.

inal[1] capital, that it is expedient to write off all or a great portion of the difference.

Such a restriction may be effected either

1. By cancelling shares unissued or redeemed, or
2. By reducing the value of each share.[2]

It is quite comprehensible, that the promoters of a company being over sanguine as to the amount of business to be done, should place the nominal capital of a company at a much higher figure than is afterwards found to be necessary or desirable. The public do not generally take the same sanguine view of the company's prospects, and the shares do not "go off." The experience of the company, after it has been for some time in operation, does not confirm the anticipations formed of it; while the shares are still further hampered and depreciated by the knowledge that a number still unissued remain in the company's vaults.

Under these circumstances, it becomes desirable to reduce the capital stock by cancelling such a number of unissued shares, as will bring it to the level (or nearly so) of the actual requirements of the undertaking.[3]

A reduction effected in this manner interferes in no way with the rights or security of creditors, as the shares so cancelled have never been subject to their claims or any guarantee therefor.

Again, it may occur after all the stock has been paid up and while it is still in the company's hands—that is unim-

[1] The word "nominal" is here used in a sense somewhat different from that in which it is used by some of the English writers. By the latter it is used in contra-distinction to the paid-up capital, while here it is used in contra-distinction to the actual value of the assets of the company, whether such "nominal capital" be paid-up or not.

[2] The section says nothing as to the manner in which the reduction is to be made, but these are the recognized ways, and are both implied by the terms of the second part of section 21.

[3] Where a company is incorporated by special Act, the same thing is effected by obtaining authority to that end from the legislature; see 40 Vic., cap. 70, authorizing the Royal Canadian Insurance Co. to reduce its capital in this way, from six millions to any amount not less than two millions.

paired by losses—that a depression of trade, a falling off in the industry undertaken by the company curtails the means at its disposal of profitable investment, and makes it desirable, in order that the capital may not lie idle on its hands, to redeem a certain portion of its stock and cancel it.

Again, where, by losses, the capital of a company has become so impaired that the market value of the shares has fallen, with little or no hope of recovery, considerably below par, it becomes desirable, in the interest of the remainder of the capital, to bring the nominal capital of the company down to something like its actual value—much in the same way as an arm or a leg is sometimes lopped off in order to save the rest of the body. This may be done by reducing *pro tanto* the value of each share—saving at the same time the liability of the holders for any amount remaining unpaid on them. Thus the holder of a hundred dollar paid up share in a company whose capital should become reduced forty per cent. under authority of this section, would find himself the holder of a sixty dollar share; while the holder of a similar share, of which fifty per cent. only had been paid up would find himself still liable to the then existing creditors of the company for the other fifty, though this share would represent no greater value than the other.

A provision for reducing the capital stock in this manner though now forming a part of Joint Stock Company law everywhere, is a device of comparatively recent date.

The English Act of 28 Vic., though making provision for the increase of capital as already referred to,[c] makes no mention of a reduction, nor was it until the amending Act of 1867, that such a provision was introduced. And it was held, in several cases, that a reduction of capital otherwise than under such Act of 1867, or the subsequent further amending Act of 1877, was illegal and *ultra vires* of the

[c] *Vide supra.*

company.[1] And it was only by this latter amending Act that the provision went so far as above described. The Act of 1867. authorized only the reduction of the nominal capital of the company by allowing the company to provide that capital unpaid should be extinguished, but it did not authorize writing off as lost, capital actually paid up.[2]

This is now provided by the Companies' Act, 1877.[3]

By reference to the Act of 1877,[4] it will be seen that "paid up capital may be reduced *either with or without extinguishing or reducing the liability, if any remaining, on the shares of the company.*" These words, though not found in the Act of 1867, express the effect of that Act also, and consequently, in order to avoid injustice to creditors by an unconditional reduction in the liability of shareholders, it was provided that an application should be made to the Court to confirm the reduction, and that persons having claims against the company would be entitled to object to the granting such application, at least, until (by another section) special security was given for their claim. And *in re* The Patent Ventilating Company,[5] the court required the consent of all creditors, or the amount of their debts to be paid, either to them or into court, refusing to follow in this respect the decision, *in re* The Credit Foncier of England.

Both by the present Act and the English Act, the liability of the shareholders may be reduced in proportion to

[1] *Holmes* v. *Newcastle Abattoir Co.*, 1 Ch. D. 682; *Hope* v. *International Financial Society*, 4 Ch. D. 327.

[2] Ebbw's Case, 4 . h. D. 827; Kirstall Brewery Co., 5 Ch. D. 535; London Taverns Co., W. N., 1877, 113; Quære National Arms Co., W. N., 1877, 31.

[3] The provision reads: "The word 'capital,' as used in the Companies Act, 1867, shall include paid-up capital; and the power to reduce capital conferred by that Act shall include a power to cancel any lost capital *or any capital unrepresented by available assets*, or to pay off any capital which may be in excess of the wants of the Company; and paid-up capital may be reduced either with or without extinguishing or reducing the liability (if any) remaining on the shares of the Company, and to the extent to which such liability is not reduced, it shall be deemed to be preserved notwithstanding anything contained in the Companies Act, 1867." Act, 1877, sec. 3.

[4] *Vide previous Note.*

[5] 48 Law J. Rep., 728.

the reduction of their shares *quoad* future creditors. The justice of this provision seems manifest enough. A company has been unfortunate, has lost capital, and wishes a reduction. The Act says, "Very well, secure your present creditors, announce that your capital has been reduced,[1] and you may be relieved from liability to the extent of such reduction *quoad* all persons dealing with the company in future." And this seems reasonable, as in all cases of reduction of capital, from whatever cause, the chances of gain are reduced in proportion, and so might fairly the liability of the shareholders if they desired it.

(*c*) *Formalities.*—The formalities to be observed both for an increase and decrease of capital set forth in the two following sections, are the same as those referred to under previous sections, and require no further reference.

12. Supplementary Letters Patent.

23. At any time not more than six months after such sanction of such by-law, the Directors may petition the Governor, through the Secretary of State, for the issue of supplementary letters patent to confirm the same:

2. With such petition they must produce a copy of such by-law, under the seal of the Company, and signed by the President, Vice-President or Secretary, and establish to the satisfaction of the Secretary of State, or of such other officer as may be charged by the Governor in Council, to report thereon, the due passage and sanction of such by-law, and the *bonâ fide* character and expediency of the increase or decrease of capital or sub-division of shares thereby provided for;

3. And to that end the Secretary of State, or such officer, shall take and keep of record any requisite evidence in writing by solemn declaration, as above mentioned, oath or affirmation.

24. Upon due proof so made, the Governor in Council may grant such supplementary letters patent under the great seal; and notice thereof shall be forthwith given by the Secretary of State in the *Canada Gazette*, in the form of Schedule B, appended to this Act; and thereupon, from the date

[1] By another section of the English Act, it is provided that in such case the Company shall, for a certain period to be fixed by the Court, add the words, "and reduced" to its name (Act, 1867, sec. 10), and in any case in which it thinks fit so to do my require the Company to publish, in such manner as it thinks fit, the reasons for the reduction of its capital, or such other information with regard to the reduction of its capital as the Court may think expedient, etc. Act, 1877, sec. 4.

of the supplementary letters patent, the capital stock of the Company shall be and remain increased or decreased, and the shares shall be sub-divided, as the case may be, to the amount, in the manner and subject to the conditions set forth by such by-law; and the whole of the stock, as so increased or decreased, shall become subject to the provisions of this Act, in like manner (so far as may be) as though every part thereof had been or formed part of the stock of the Company originally subscribed.

13. Letters Patent to be Subject to Act.

25. All powers given to the Company by the letters patent or supplementary letters patent shall be exercised, subject to the provisions and restrictions contained in this Act.

The meaning of this section at first glance is not as clear as it might be. It would appear, however, that the intention of the section is, that the letters patent cannot give to a company any greater powers than those provided by the Act, and in so far as any letters patent granted under the Act surpass the limits of the Act, they will be null. Nor can the company or the directors do anything under their charter for which authority is not found in the Act.

To go beyond, that the company would require to be incorporated under a special Act, in which such additional powers would be embodied.

And in the United States, *held*, that mere general words in a charter, do not authorize the corporation to do acts which are prohibited by the general public law of the State. Thus a provision in a charter, authorizing the corporation to dispose of property "in any manner they deem best," does not operate to enable them to resort to lottery to dispose of it, if lotteries are prohibited by the general law.[1] And again, a charter authorizing the corporation thereby created to carry on a stock yard, does not authorize them to carry on such business in a way that would be injurious to others, or would materially affect their health, their comfort or their property.[2]

[1] *State* v. *Krebs*, 64 N. C. 604, Su. Ct., N. C., 1870; Abb. Dig., Vol. II.

[2] *Babcock* v. *New Jersey Stock Yard Co.*, 20 N. J. Eq. 296, 1869; Abb. Dig., Vol. II.

CHAPTER IV.

ORGANIZATION AND MANAGEMENT.

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1. Commencement of Business.

A charter having been obtained and other preliminary matters settled, it is competent to the company to commence business forthwith. As half of the total amount of the capital stock must be *bona fide* subscribed before apply-

ing for the charter,[1] it is not, as a rule, considered necessary to stipulate beyond this, that any particular proportion of the stock shall be taken up before entering upon the objects of the company, the persons who have subscribed the first half being themselves most interested and best capable of judging of the propriety of the step. But under the English system, which makes no such provision, it is not unusual for the shareholders to stipulate, in order to protect themselves, that the business of the company shall not be entered upon until a certain number of shares have been subscribed. It was indeed, at one time discussed whether or not a company could commence business until the whole of the shares had been subscribed. But under the Act of 1862, and amending Acts, there is no restriction of this kind. And it is now no defence to an action for calls, to say that all the shares have not been subscribed.[2] Nor will a Court in such case interfere to prevent business from being commenced.[3] And under the Canadian Act the intention doubtless is, that the company may commence their transactions and call upon the shareholders to contribute, as soon after the issue of the letters patent as the directors may deem expedient,[4] whether or not a single share has been subscribed for beyond the number necessary to obtain the charter. And if no business is entered upon within three years the charter will be held forfeited by non-user.[5] And *in re* Metropolitan Railway Warehousing Co.,[6] a company was ordered to be wound up on this ground, contrary to the wishes of a great majority of the shareholders, it being held, that the depositing of a sum of money with bankers could not be considered a commencement of business. And in the United States, *held*, that the words "organize" and "organization" mean the election of offi-

[1] *Vide supra, pp.* 117, 118.

[2] *Ornamental Pyrographic Co.* v. *Brown*, 2 H. & C. 63; 32 L. J. (Ex.) 190.

[3] *McDougall* v. *Jersey Imperial Hotel Co.*, 2 H. & M. 528; 12 W. R. 1142.

[4] *Vide* sec. 32, *post.*

[5] *Vide* sec. 72, *post.* Under the English Act the time is one year. Act (Imp.), 1862, sec. 79. By the law of Mass. two years, Batchelder, p. 43.

[6] W. N., 1867, 94.

cers, constituting complete preparation for the transaction of business, and do not include payment of capital stock.[1] And in another case, *held*, that the life of a corporation dates from its organization, and not from the time it commenced to do business.[2] And the regularity and validity of the organization cannot be quashed collaterally,[3] as for instance, by way of defence to an action to recover a unpaid balance of subscription to the capital stock.

2. Directors.

26. The affairs of the Company shall be managed by a Board of not less than three nor more than fifteen Directors.

27. The persons named as such, in the letters patent, shall be the Directors of the Company until replaced by others duly appointed in their stead.

(*a*) *Provisional.*—Until the first general meeting of the company, the persons named in the letters-patent act as provisional directors, whose business it is to manage the affairs of the company and to call a general meeting of its members, for the election of directors and the further organization of the company, as soon as conveniently can be had, with due regard to the delays and other formalities precedent to such meeting. No period is fixed by the Act within which such first meeting must be held, but by the Imperial Act (Amending) of 1867,[5] a general meeting must be held within four months from registration, under a penalty of five pounds for every day allowed to elapse after that time. Up to the time of such meeting the provisional directors have the same powers as directors elected by the shareholders. They may appoint one of their number to the office of manager at a salary, subject of course to his vacation of the position of Director.[6] From this it would

[1] *New Haven R. R. Co.* v. *Chapman*, 38 Conn. 56, 1871; Abb. Dig. Vol. II.

[2] *Hanna* v. *International Petrolcum Co.*, 23 Ohio St., 622, Lucr. 1873.

[3] *Aurora, etc., R. R. Co.* v. *Lawrenceburg*, 56 Ind. 80; Su. Ct. 1877.

[4] *Swartwout* v. *Mich., etc., R. R. Co.*, 24 Mich. 389, Su. Ct., 1872. Abb. Dig. Vol. II.

[5] Sec. 39.

[6] *Eales* v. *Cumberland Black Lead Mine Co.*, 6 H. & N. 481.

follow that the provisional directors would have the power to provide for any of the matters and things referred to in section 32,[1] subject of course to confirmation (as therein provided) at the general meeting.

At this meeting, the company will proceed with the organization of the company, and the enactment of by-laws for its regulation and government.

(*b*) *Number of Regular Board.* The number of directors may be fixed anywhere between three and fifteen,[2] these numbers inclusive. A small board of directors, however, is almost universally recommended in preference to a numerous one. "Five," says Cox,[3] "is ample for all purposes. The mistake of having large boards for the sake of names—for there can be no other use in them—is the true reason why Joint Stock Companies are so rarely enabled to compete successfully with individuals. They want unity of purpose and promptitude in action," etc. And another reason pointed out by the same writer arises from the question of remuneration. "The directors," he says, "are entitled to liberal remuneration for the time and thought they devote to the affairs of the company. But the directors' fees are seldom proportioned to the number of directors. Whether the board be large or small, it is usual to vote the same fee, etc." And other writers agree in the advisability of small boards. "It is better to appoint," says Healey,[4] "a small number of good men to manage the company's business, and by substantial remuneration make it worth their while to devote their best energies to the discharge of their duties."

(*c*) *Remuneration of Directors.*—But it is not always the case that the same fee is voted, whether the board be large or small. Directors indeed, in the absence of agreement,

[1] *Vide post.*

[2] Under the Quebec Act, the maximum number is nine. Q. 31 Vic., cap. 25, sec. 15, *post*. By the Code of California, eleven. Proffatt, p. 45. By the law of Mass. no maximum is fixed.

[3] Cox, Joint Stock Cos., p. LVI.

[4] Chadwyck-Healey, Joint Stock Cos., p. 131.

cannot, from the nature of their position alone, lay claim to any remuneration, however arduous may have been their duties. They occupy the position not of servants, but of managers and trustees, therefore an action for a *quantum meruit* would not lie.[1]

In the United States it is said that directors are not usually compensated for their services as such.[2] And in a number of leading cases held, that the law does not imply a promise on the part of corporations to pay their directors for services as such. There should be a by-law or resolution of the board to compensate them for their services before they can recover.[3] But where a director renders services as secretary under a resolution of appointment, which does not specify his remuneration, he may recover the reasonable value of such services, and also of services rendered to the company at the request of the president and directors, as land commissioner and as attorney.[4]

In *Fellows* v. *The Albert Mining Co.*, in New Brunswick, the directors of a company passed a resolution allowing their president a salary of twelve hundred dollars for the year current, and ordered that a certificate of indebtedness under the corporate seal, should be issued to him in said sum, upon which the president caused the corporate seal to be attached to the certificate. There was no resolution of the stockholders voting the president remuneration for his services, nor was there any provision, either in the Acts of incorporation or the by-laws of the company, for such remuneration. *Held*, on an action brought on this certificate, that the president was not by law entitled to receive pay for his services, that the board of directors had no right to pass the resolution referred to, that the act of affixing the corporate seal to the certificate was of no legal force, and it

[1] *Dunstan* v. *The Imperial Gaslight Co.*, 3 B. & Ad. 125.

[2] Angell & Ames, Corporations, sec. 317.

[3] Abb. Dig., Vol. II.

[4] *Rogers* v. *Hastings, etc., R. R. Co.*, 22 Minn. 25, Su. Ct., 1875; Abb. Dig., Vol II.

was open to the company to resist payment in a court of law.[1]

Under the English system however, it is usual to provide for the payment of the directors in the Articles of Association, and the rate and manner in which such payment shall be made. Some companies, as an incentive to exertion on the part of the directors, agree to set aside a bonus for them, whenever a year's profits enable a dividend at a given rate to be declared.[2]

That the remuneration of the directors is contemplated by the present Act is clear from section 32,[3] which makes the remuneration of the directors one of the matters for which the directors themselves may provide, subject to confirmation by the shareholders at a general meeting,—until which time, no by-law providing for the "payment of the president or any director shall be valid or acted upon."

Under these circumstances it is usual and expedient, to settle these matters at the first general meeting in order to avoid difficulty thereafter. And *in re* London Granite Co.,[4] it was *held*, that there is no presumption that their fees are to be paid out of the profits only, and that where no profits were made they could remunerate themselves out of the capital. And in *Orton* v. *The Cleveland Fire Brick Co.*,[5] it was *held*, that where remuneration is provided by the Articles of Association, it can be recovered by an action on a covenant. And, *semble*, where it is provided by the by-laws of the company regularly passed and adopted. But though directors are not entitled to recover remuneration where it has not been provided for, they are entitled to indemnity for losses and expenses incurred in discharge of their duties.[6] And in *Lambert* v. *Northern Railway of Buenos Ayres Co.*,[7] it was *held*, that a promise by directors to give their

[1] Stevens' Dig., 340.
[2] Chadwyck-Healey, p. 139.
[3] *Vide post.*
[4] Harvey Lewis' Case, 26 L. T. N. S. 673.
[5] 13 W. R. 869.
[6] Shelford, Joint Stock Cos., p. 96, and see sec. 57, *post.*
[7] 18 W. R. 180.

services gratuitously was a mere *nudum pactum*, and did not prevent them from recovering the salaries allotted to them under the previous contract with the company, as defined by the Articles of Association.

28. No person shall be elected or appointed as a Director thereafter, unless he is a shareholder, owning stock absolutely in his own right, and to the amount required by the by-laws of the Company, and not in arrear in respect of any call thereon; and the major part of the Directors of the Company shall, at all times, be persons resident in Canada.

(*d*) *Qualification of.*—The rule is, that a person to act as director in a Joint Stock Company, shall be the *bona fide* owner of a certain number of shares, as a guarantee of his interest in its affairs.[1] The English Act, however, makes no stipulation of this kind, the matter being left entirely in the hands of the parties themselves, and the section above, though providing that a director must be the owner of stock, leaves the extent of such qualification with the Company itself. This question of qualification has given rise to a number of points, which have been the subject of litigation and judicial decision. One of these was as to the meaning of the term itself.

In Lord Claud Hamilton's case,[2] the decision implied that "qualification" would mean qualification for election and not necessarily qualification for director. We say "implied" because this was not the direct holding. The case was of one, who, having subscribed the memorandum of association, was sought to be held as a contributor, under a clause subsequently added to the regulations of the company, by which the "future qualification" of a director was fixed at so many shares, and it was *held*, that this could apply only to directors elected subsequently to the addition of the clause, and not to directors acting as such by virtue of their position.

[1] But in the absence of any statutory provision stock qualification may be dispensed with *State* v. *McDaniel*, 22 Ohio 354, Su. Ct., 1872.

[2] L. R. 8, Ch. 548.

And so, by the terms of the above section, the provisional directors are excluded from the liability to a share qualification, if it so happened, that any one or more of the applicants were not the holders of the stock at the time of the granting of the letters patent.[1]

And the result has been held the same where a person who is not a shareholder is elected a director, and is allotted stock for the express purpose of qualifying him to accept, but does not formally accept.

Thus in the East Norfolk Tramway Co.'s case,[2] it was *held*, that a person who had been unanimously elected a director, but who had refused to act, although the company had sent him twenty shares in order to his qualification, could not be held liable as a contributory. In the Percy & Kelly Nickel, Cobalt and Chrome Iron Mining Co.'s case,[3] the articles of the company provided, that no person should be qualified for director who was not the holder of fifty shares. The board of directors undertook to elect A. a director, though he had no stock. He attended two meetings and then resigned. *Held*, that his election was void. And in Jenner's case,[4] (same company), the defendant having been chosen a director, attended six meetings of the board and took an active part in the proceedings, and his name appeared in the prospectus of the company as a director, but he never held any shares. *Held*, on a winding up, that he had never been a director, and could not be made a contributory. The result was the same in *Kipling* v. *Todd*.[5] In that case, a railway company was incorporated in 1866, by a special Act, which embodied also the Companies' Clauses Consolidation Act, 1845.

[1] But where the articles of association of a company provided that every director should at the time of his appointment, and thenceforth during his continuance in office hold, etc. *Held* that this applied to original directors named by the articles of association. *In re* Esparto trading company 48, L. J. Ch. 573.

[2] 5 Ch. D. 963, and 1 Leg. News, Mon., p. 24.

[3] 5 Ch. D. 705, and 1 Leg. News, Mon., p. 35.

[4] 7 Ch. D. 132, and 1 Leg. News, Mon., p. 366.

[5] 3 C. P. D. 530, II. Leg. News, Mon., 61, 27 W. R. 84; 47 Law J. R 617, 39 L. T. 188.

The special Act provided, that the qualification for directors should be fifty paid up shares, and T. and A. were appointed directors until the first ordinary meeting of the company. No such meeting was ever held. T. sent his resignation to a meeting of the board of directors, held in August, 1866, before he had acted in any way as director, and it was accepted, and he ceased to have anything to do with the company in any way. No shares were ever allotted him, and no call was ever made upon him. One S. acted as director from the time of T.'s resignation. A. acted as director until December, 1867, when he resigned. No shares were ever allotted him. From the time of his resignation, one B. acted as director. No register of shareholders existed until 1869, and then one was informally drawn up. From that it appeared that all the shares had been allotted, but none to T. or A. Since 1869, the company became indebted to another, and in 1876, the latter got judgment for a large sum. This judgment was not satisfied, and thereupon *scire facias* was issued against T. & A. as the holders of fifty shares each. *Held*, that there was an implied acceptance by the company of T. and A.'s surrender of their inchoate right to shares and evidence enough of it, that the claim of the company creditor had accrued since such acceptance, and therefore, as against it, T. & A. were not estopped from denying their liability, and the *scire facias* must be dismissed.

A much stronger and more recent case of the same kind is that of the *Nanty. Glo. Iron Works Co.* v. *Graves*.[1] In that case, defendant improperly received from the promoters fifty shares of a company on his becoming director, and acted as director until 1874, when he resigned. While director, he assisted in carrying out a purchase by the company from the promoters. The company brought an action against him in 1877. *Held*, that the fifty shares belonged to the company, and that defendant was a trustee for them, and that the company were entitled to elect to take

[1] L. R. 12, Ch. D. 738.

the value of the shares when received by the defendant, and four per cent. from the date of the transfer.

But where, under similar circumstances, a compulsory winding up was ordered, the parties were held liable. In that case, the company was formed in 1871, under a special Act incorporating the Companies' Clauses Consolidation Act, 1845, and was registered in 1875, under the Companies' Act, 1862. At a meeting held on the ninth of July, 1872, it was resolved, that 200 paid up shares should be issued to A. & B., who were officers of the company, in trust for the company. These shares were described in the register, as held in trust for the company, the amount paid being *nil*. At a meeting held on the 27th January, 1873, it was resolved, that 200 shares be allotted to C. (the chairman), to be held in trust for the company for the purpose of insuring a quorum at a certain special general meeting. They were registered in C 's name, and described as held in trust for the company, the amount paid being *nil*. At a meeting held on the 29th September, 1875, A., B., & C. being present and voting in respect of the shares before mentioned, a resolution was passed for the registration of the company under the Companies' Act, 1862, and with a view to winding up. At a meeting of directors held on the 26th November, 1875, C. in the chair, it was resolved that 200 guaranteed shares be allotted to C., and 150 to D. (also an officer of the company), in trust for the company, for the sole purpose of insuring a quorum for the extraordinary meetings of shareholders to carry out the winding up, the shares not to be voted on at other meetings. At an extraordinary general meeting, held the same day, a winding up was agreed upon, A. and B. voting by proxy, and C. & D. being present as holders of shares respectively allotted to them. C. then signed the list of members, which was afterwards delivered to the Registrar of Joint Stock Companies under section 183 of the Companies Act, 1862, in which A., B., C. and D. were described in the manner before mentioned. In the settlement of nominal capital delivered under section 183, it was

stated that 1162 guaranteed shares had been issued, and that on the 750 shares issued to A., B., C., and D. nothing had been paid. An order was afterwards made for the compulsory winding up of the company, all its liabilities having been incurred before the registration. *Held*, that A., B., C. and D. were liable as contributories in respect of the shares allotted to them.

The most recent case is that of the Esparto Trading Co.,[2] in which A. and B., in July 1866, signed the memorandum of association for one share each. A. was entered in the register for one share, and B. for four shares. B. was appointed director of the company by one of the articles of association, and by another, it was provided that every director should at the time of his appointment, and thenceforth during his continuance in office, hold at least four shares. B. acted for some time as director, and the amount due on his shares on allottment, and certain calls, were debited against him in the books of the company. A. and B. both signed the memorandum for one share, at the request of the promoter, and on the understanding that they should not be called upon to pay anything in respect of them, and in 1867, when they were asked to pay the calls, they requested the directors to cancel the shares, and the directors did so. The directors had power under the articles, to cancel shares on non-payment of calls. In 1876, several years after B.'s death, the company was ordered to be wound up, and the liquidator placed A. and the executors of B. on the list of contributories for the above mentioned shares. *Held*, maintaining the action of the liquidator.

But where a person accepts the office of director, and has shares allotted to him in order to his qualification, which he accepts, he cannot afterwards repudiate his liability thereon. Questions like this have arisen from time to time in different forms, but principally as to the liability

[1] *In re Ennis* v. *West Clare R. R. Co.*, 3 L. R. Ir. 187.

[2] 28 W. R. 146.

[3] *Re* Metropolitan Public Carriage Company, Brown's case, L. R. 9, Ch. 102; and Green's case, L. R. 18, Eq. 428.

of the person as a contributory on shares allotted to him for the express purpose of qualification. The rule deducible from all the cases appears to be, that if a person is not qualified according to the by-laws of the company, *at the time of his election*, the whole transaction will be null, although a sufficient number of shares be afterwards allotted to him, in order to qualify him for the position. Nor will the rule be satisfied by a transfer to him of nominally paid-up shares.[1] But if a person accept an allotment of shares, and consent that his name be placed among the number of directors, he cannot escape liability with respect to such shares.[2]

(*f*) "*In his own right.*"—In *Pulbrook* v. *Richmond Mining Co.*, a director was held still qualified though he had transferred his shares, no change having been made in the register. In that case, one of the articles of association of the company provided, that no person should be eligible as a director unless he held as registered member, *in his own right*, capital of the nominal value of £500: and another, that a director was to vacate his office if at any time he held *less* than the nominal amount of capital required as his qualification for election. P., whose name appeared on the register of the company as holder of 100 shares, was elected a director on the 23rd of August, 1877. He had, however, transferred the shares by way of mortgage in the previous January, but his name by agreement remained on the register. The other directors, being informed of the transfer by P., excluded him from the board of directors, on the ground, that he had vacated his office by being no longer in his own right of the necessary qualification shares. On motion by P., in an action against the company and the other directors, to restrain them from so excluding him, it was *held*, that P. had a right of action as

[1] *Re* Llanharry Hematite Co., Roney's case, 33 L. J., Ch. 731, 736; and Great Northern Coal Co., Currie's case, 3 D. G., J. & S. 367.

[2] As to contracts with third persons made by unqualified directors *vide infra*.

[3] 48 Law, J. Rep. 65.

for an individual wrong done to him personally, and that the words holder "in his own right" did not mean beneficial holder; but that they must not be shares to which the holder is entitled as legal personal representative, husband of a female member, or trustee in bankruptcy.

(*e*) *Disqualification of Directors.*—The Canadian Act makes no provision for the disqualification of Directors while holding office, though it may be presumed that in the event of their ceasing to own and hold the requisite number of shares, they would be considered disqualified, and no longer entitled to sit and act as directors.[1] But a mortgage of his shares by a director, would not necessarily amount to a disqualification.[2] And, *semble*, that by the law of the Province of Quebec, the rule would be the same with regard to a pledge or transfer of such shares as collateral security.

By the schedule of rules appended to the Imperial Act, 1862, a director may also become disqualified if he holds any other office or place of profit under the company. The reasons given for this rule are, that the company have a right to the entire services of their paid directors, and the general one that no trustee can derive any benefit from dealing with the trust funds, especially in cases like this, where the interest of the trustee would tend to deprive the *cestui qui trust* of his advice and assistance to which, by his position of director, the latter would be entitled.[3] But it is perfectly competent to a company to stipulate that the right to these exclusive services on the part of their directors is a benefit of which they do not desire to avail themselves.[4] And, moreover, the rule is restricted to offices of profit, that is, for which he receives remuneration. And so where a director did the work of a secretary, without remu-

[1] Chadwyck Healey Joint Stock Cos., p. 136.

[2] *Cumming* v. *Prescott*, 2 Y. & C. Ex. in Eq. 488. Shares being personality, would not be susceptible of mortgage by the law of the Province of Quebec. Civil Code, Art. 2016.

[3] Buckley Joint Stock Companies, p. 408.

[4] Adamson's case, L. R. 18, Eq. 670.

neration or emolument of any kind, it was held that he was not disqualified.[1]

And if he become bankrupt or insolvent he is disqualified, as the result of such bankruptcy would be to deprive him, *pro tempore* at least, of the shares on which he qualified. But in *Phelps* v. *Lyle*,[2] it was *held*, that a director does not necessarily vacate his seat by becoming bankrupt, unless so stipulated by the articles (or, *semble*, by the by-laws) of the company.

And if he is concerned in or participates in the profits of any contract with the company. The reason for this rule is too evident to require to be stated. But doubts may arise as to the application of the rule, as was the case, *in re* The Imperial Mercantile Credit Association *v.* Coleman,[3] wherein it was *held*, that a director might have an interest in business brought by him to the company, and under the circumstances, that a director might retain a commission made by him on business so brought. And a clause in an agreement for the amalgamation of two companies, providing that part of the purchase money should be paid to the directors of the selling company, by way of bonus, was held not to invalidate the amalgamation.[4] But where a director made advances to his company on the terms that no interest should be payable, but that he should be allowed a commission or bonus on goods sold, such commission was disallowed, and repayment only of his advances with interest at five per cent. ordered.[5]

And in another and more recent case, M., an original director of a company, sanctioned an agreement on behalf of the company, which was adopted by the articles of association, for the purchase by the company of certain patents for a sum in cash and 3,200 fully paid-up shares of the

[1] *Iron Ship Coating Co.* v. *Blunt*, L. R. 3, C. P. 484.

[2] 10 A. and E. 113.

[3] L. R. 6, Ch. 558.

[4] *Southall* v. *British Mutual Society*, L. R. 6, Ch. 614.

[5] Cardiff Preserved Coal Co., *e. p.* Hill, 32 L. J., Ch. 154, 7 L. T. 656; Central Darjeeling Tea Co., 15 L. T. 234; Anglo-Californian Gold Mining Co., *e. p.* Williamson, 17 L. T. 164.

company. It was provided, that the certificates of 5,600 shares should be retained by the company for two years from incorporation. Immediately after the allotment of these shares to the vendors, they transferred 1,100 of them to M. without any consideration. The company was subsequently wound up, and at the date of the winding-up M. had still 855 of these shares registered in his name, having assigned the remaining 255, in some instances without any consideration. *Held*, that M. had been guilty of a misfeasance, within the meaning of the Companies Act of 1862, and must pay for the whole of the shares assigned to him at their nominal value, not having proved that they were worth less.[1] And the same rule obtains in the United States, that the position of a director disables him from taking any personal benefit under a contract entered into on behalf of the corporation.[2] But not so as to prevent him from making a purchase of stock in the company from a shareholder.[3]

Nor does a prohibition in the articles against a director voting "as a director in respect of any matter in which he is personally interested" prevent him from voting as a shareholder at a general meeting in respect of such matter.[4]

(*g*) *Acts of de facto Directors, valid.* And another point worthy of remark is that, with respect to third parties at least, defects or irregularities in the appointment or election of a director, do not invalidate acts done by him *bona fide* in that capacity. If it were otherwise, the affairs of a company would be always subject to be thrown into confusion, if indeed, it would be possible for a company to carry on, owing to the lack of confidence which such a state of things would naturally engender. In the County Life Assurance Co.'s case,[5] it was held that third persons are not bound to

[1] *In re* Diamond Fuel Co., Metcalf's case, 28 W. R. 417.

[2] *European, etc., R. R. Co.* v. *Poor*, 59 Me. 277 Su. Ct. 1871.

[3] *Commissioners of Tippecanoe* v. *Reynolds*, 44 Ind. 509 Su. Ct. 1873; Abb. Dig. Vol. II.

[4] *East Pant Du Mining Co.* v. *Merryweather*, 2 H. & M. 254.

[5] L. R. 5, Ch. 288.

see that a director is properly appointed, and if they deal with directors in good faith, without knowledge of defects of appointment, the company will be bound.[1] But acts done by them affecting shareholders, *e. g.*, the making of calls, or forfeiture of shares, would be fruitless. And the jurisprudence was, that such acts could not be subsequently validated. Now however, the Act of 1862, makes good the acts of officers invalidly appointed until the invalidity of the appointment is shown.[2]

(*h*) *Retirement of.* Another point akin to this is the retirement of a director during the pendancy of the period for which he was elected. Has a director or not the right to retire at will during the pendancy of such period? The cases, so far as has been discovered, give no definite or decisive answer to this. It was, indeed, decided *in re* Gloucester, etc., Railway Company,[3] that a director may retire, when the regulations of the company do not provide for retirement, whether his resignation be accepted or not; "but this case," says Healey,[4] "appears to have turned somewhat upon the fact, that the regulations evidently did contemplate the possibility of a director becoming unwilling to act any longer, though they gave no directions as to the course to be adopted in effecting the retirement." Other writers discuss the question on general principles, arriving sometimes at exactly opposite conclusions. Considered in their capacity as agents, says one, they have the power to put an end to their agency at will, provided they give proper notice. Considered as trustees, says another, they cannot retire until the expiration of the term or the termination of the trust. The only conclusion, then, which can be arrived at, after consideration of the authorities and cases, and which seems to be the true solution of the difficulty, is that each case would depend upon the circumstances connected with it. That is to say, that if a director

[1] Hardwick-Healey Joint Stock Cos., p. 138.
[2] Section 67.
[3] Saffland's case, 4 De. G. M. & G. 769.
[4] Hardwyck-Healey Joint Stock Cos., p. 141.

wished to retire from his office *in medium officio*, and there were no objection to it on the part of his co-directors, his resignation would doubtless be accepted. On the other hand, if he wished to retire merely to escape from the responsibilities of the position at a time when the company was suffering from adverse circumstances, or from difficulty or embarrassment of any kind, or if upon any other ground the company could show valid cause why he should not be allowed to retire, there is no doubt but they would be sustained in their objection by the Courts.[1]

And in *North & South Sub-way Company* v. *Pym*,[2] a recent case, *held*, that the resignation of a director did not imply the surrender of his qualification shares, although he was, under the peculiar circumstances of the case, not entered on the register as a shareholder until long after his resignation. But where a share qualification was only required by a resolution of the subscribers of the memorandum, and a director as soon as he knew of it took steps to get the resolution and write to the secretary resigning his seat at the board, it was held that a resolution of the subscribers could not alter the resolution of the company, and there being no contract, express or implied, to take shares, his name must be removed.[3]

29. Directors of the Company shall be elected by the shareholders, in general meeting of the Company assembled, at some place within the Dominion of Canada, at such times, in such wise, and for such term, not exceeding two years, as the letters patent, or (in default thereof) the by-laws of the Company, may prescribe.

(j) "Shall be elected by the shareholders." This is in accordance with one of the fundamental principles of Joint Stock Companies, as distinguished from ordinary partnerships. In the latter, every member of the partnership is the agent of the others, and entitled to take part in the affairs of the partnership and to bind the

[1] See last clause of sec. 31 *post*, which states that the retiring Directors *shall continue in office until their successors are elected.*

[2] 27 W. R. 259.

[3] *In re* Pat. Davit. & Boat Detaching Co., Ranken's case, 27 W. R., 39 L. T. 664.

others by his acts, in so far as such acts relate to the business of the partnership. Not so the members of a Joint Stock Company, who, as members simply, are not entitled to interfere in the management of its affairs, or to bind the others in any way, but they are nevertheless not without a voice in its transactions (as we shall see more fully hereafter) and especially in the election of those who are to be the agents of the others, who are to bind them by their acts, and to whom is entrusted the conduct of the company's affairs.

And this right will be most jealously maintained and exercised by every prudent shareholder who recognizes the importance of placing in such a position, or allowing to occupy such a position, men of the most undoubted integrity, and not men, who, for their own interests, have procured themselves to be elected, and who are, in reality, the last persons to whom the management of the company should be confided.[1]

(*k*) "*In general meeting of the company assembled.*" Except in the case of interim vacancies, when such vacancy may be supplied by the directors themselves, without consulting the shareholders generally. The manner of holding such meetings and conducting such elections is discussed below.

(*l*) "*At some place within the Dominion of Canada.*" By the common law of England it appears to have been taken for granted that the general meetings of a corporation would always be held within the jurisdiction from which its charter emanated, as no absolute rule appears to have been laid down with regard to it. It may be that in that country no case has arisen in which a corporation has pretended to hold a regular meeting of all its members beyond the limits of such jurisdiction. Even the Joint Stock Companies'

[1] The different means by which this is effected are now so well known as to make any detailed reference to them unnecessary. Nor indeed is this the place to enter upon anything of a hortatory character concerning the duties of shareholders in their own interests, and the vigilant exercise of their rights.

Acts are silent on the subject, saying merely that "Subsequent general meetings (*i.e.*, meetings subsequent to the first at which such arrangements could be made) shall be held at such time and place as may be prescribed by the company."[1] In this country, however, it is not hard to conceive of Joint Stock Companies, the greater part of whose stock is held in the United States, for instance, or *vice versa*, and by reason of which, it might be considered at some time desirable to hold general meetings in that jurisdiction in which the majority of shareholders were found.

In the United States particularly, it can be readily imagined that companies exist everywhere, the bulk of whose stock is held in another State, or other States, from that in which the company had its birth.

Hence, we are not at all surprised to find that the question has been raised as to the legality of a general meeting held outside the jurisdiction in which the company was created, and to discover that it has been laid down, "That all votes and proceedings of persons professing to act in the capacity of corporations when assembled beyond the bounds of the State granting the charter of the corporation, are wholly void."[2] And the Code of California goes much further than this, and provides that, "The meetings of stockholders and board of directors of a corporation must be held at its office or principal place of business."[3] But though this is the more regular and desirable mode, it is not pretended that by the general law of corporations, general meetings of the members *must* be held at its chief office or place of business, unless so provided by its by-laws or charter. And hence we find it stated by an authority already cited[4] that, "Where, according to the by-laws and usages of a society, their meetings for the transaction of business are opened by a presiding officer which holds his

[1] Act (Imp.) 1862, Sch. I., sec. 30.
[2] Angell & Ames, corprs, sec. 498.
[3] Sec. 319, and see Proffatt, corprs, 66.
[4] Angell & Ames, sec. 497.

office for a fixed term, and no meeting is considered duly organized unless opened by him, and such officer is prevented by the violence of members of the association from discharging his duty at the accustomed place of meeting, he and such of the society as think proper to accompany him, *may retire to some convenient place adjacent* and there open the meeting, and their acts and doings will be obligatory upon the society," etc. And in *McDaniels* v. *The Manufactnring Co.*,[1] "Where the by-laws of a corporation required the meetings of the corporation to be held, at the counting room of the corporation, and it appeared from the records, that a meeting was held at the dwelling house of the general agent and clerk, without stating that it was at the counting room of the corporation, it was held, that the court would presume the counting room was, for the time being, at that place." And the object of the present section is to prescribe merely that the general meeting of shareholders[2] shall be held within the limits of the Dominion, leaving it to the regulations of the company itself to prescribe the exact place at which they shall be held.

(*m*) "*At such times*," *etc.* The term for which directors are elected, according to the next section,[3] is one year, where no different provision is made, as herein referred to. And this is in practice by far the most ordinary, if, indeed, it be not the universal period or term of office in this country. Under the English Act the system is a different one. There the one-third only of the directors retire at the end of the year and are replaced by the election of others.[4] This retiring third is determined the first two elections, before the system of rotation is established, by ballot, in the same manner as their successors are chosen.

Though the object of this system is very good, being simply to provide that a majority of the directors shall

[1] 22 Vt. 274.

[2] As to meetings of Directors, *Vide post.*

[3] *Post.*

[4] Act (Imp.) 1862, Sch. 1, Tab. A., Art. 58, *et seq.*

remain from one year to another, so that the management of the company shall not at any time be thrown entirely into the hands of new directors, in practice it is found that without this provision, except in very unusual cases, (when indeed the English system would necessarily be found an inconvenience rather than otherwise,) the result is the same.

(*n*) *Formalities.* As will be seen in another place,[1] some formalities are directory only, while some are imperative and cannot be omitted without invalidating the proceedings to which they relate. Thus, a by-law of a corporation requiring that on an election day the secretary shall produce the transfer books and a list of the stockholders entitled to vote is directory, and an omission to produce the books does not invalidate the meeting.[2] But the election is invalid if the list of stockholders exhibited and acted upon on the day of election is not a true list of the stockholders, and is known not to be such by the parties who exhibited it, but contains names of persons not entitled to vote.[3]

(*o*) "*As the By-laws may prescribe.*" In *Johnson* v. *Jones*,[4] it was *held*, also, that when it is provided (as in the present case) that all elections of directors, after the first, shall be held annually at such times as the by-laws shall direct, no second election can be held until such by-laws have been adopted. Where, however, a meeting of stockholders was organized and business transacted fifteen minutes before the hour appointed, the irregularity was held not to be cured by a subsequent meeting at the appointed hour, which professed to confirm what had been done.[5]

(*p*) *Quo Warranto.* The validity of such an election may be attacked by an information in the shape of a *quo war-*

[1] *Vide infra.*

[2] *People* v. *Albany, etc., R. R. Co.*, N. Y. Su. Ct., 1869.

[3] *Johnson* v. *Jones*, 23 N. Y. 216, 1872; Abb. Dig. Vol. II.

[4] *Ibid.*

[5] *People* v. *Albany, etc., R. R. Co.*, 55 Barb, 344 N. Y. Su. Ct., 1869; Abb. Dig. Vol. II.

ranto,[1] laid by any interested person. But the Court will not grant an information against one who has merely claimed to be admitted to an office or franchise, though his claim is founded upon an election which is not *prima facie* void, but there must be an user and possession.[2] Nor will the Court allow an information in the nature of a *quo warranto* to try the title to an office merely because there has been an irregularity in the election, in the absence of bad faith, and where the result of the election has not been affected.[3] And a distinction must be drawn also between an office held by virtue of election and an office held by virtue of appointment. Thus, an action in the nature of a *quo warranto* will not lie against an officer of a private corporation who is the mere servant or agent of the company, and holds at the will and pleasure of the directors; for if he were ousted, the directors might immediately reinstate him.[4] And where an election of directors in a joint stock company was clearly illegal—the voters having been each allowed only one vote, whereas each share should have given a vote—but the parties chosen had for more than eight months discharged the duties, the Court refused to interfere by *mandamus* for a new election.[5]

(*q*) *Removal of Directors.* The schedule to the English Act contains a provision also for the removal of directors in certain cases—a subject to which the Canadian Act makes no reference.[6] Article 65 of the schedule annexed to the Act of 1862 provides that, "The company in a general meeting may, by special resolution, remove any director before the expiration of his period of office, and may, by ordinary resolution, appoint another in his stead," etc., and

[1] Angell & Ames, sec. 732, *et seq.*, Code of Proc. Que., Art. 1016.

[2] Angell & Ames, sec. 744.

[3] *Queen* v. *Ward*, L. R. 893, 210, 1873.

[4] *People* v. *Hills*, 1 Laws 202, Su. Ct., 1869; Abb. Dig., Vol. II.

[5] *Moore* v. *The Port Bruce Harbour Co.*, 14 Q. B. 365; Robinson's Dig., 762.

[6] This Schedule however, it must be remembered, corresponds to the by-laws of a Company and makes provision for matters, and takes effect only where the by-laws of the Company are silent.

Inderwick v. *Snell*,[1] it was *held*, "That where power is given by the articles (or by-laws) to remove a director for negligence, misconduct in office, or other reasonable cause, this means such a cause as shall be deemed reasonable, not by a court of justice, but by the shareholders assembled at a meeting duly convened. In the absence of proof of direct fraud, therefore, the Court has no jurisdiction, and will refuse to interfere or determine whether the decision of the meeting has or has not been unduly influenced by unfounded statements." And in the United States held, that Courts will not interfere to suspend directors on the ground of their having made improper expenditures touching the business of the company, nor on charges of personal immorality.[2]

But though no such provision is directly found in the Act, there is no doubt that it would be quite competent to the company to include such among their by-laws, though in the absence of such by-law, their power to remove a director may be doubted.

3. Meetings, etc.

30. In default only of other express provisions in such behalf, by the letters patent or by-laws of the Company,—

1. Such election shall take place yearly, all the members of the Board retiring, and (if otherwise qualified) being eligible for re-election:

2. Notice of the time and place for holding general meetings of the Company shall be given at least twenty-one days previously thereto, in some newspaper published in or as near as may be to the place where the chief office or place of business of the Company is situate;

3. At all general meetings of the Company, each shareholder shall be entitled to give one vote for each share then held by him. Such votes may be given in person or by proxy,—the holder of any such proxy being himself a shareholder. But no shareholder shall be entitled, either in person or by proxy, to vote at any meeting unless he shall have paid all the calls upon all the shares held by him. All questions proposed for the consideration of the shareholders shall be determined by the majority of votes,—

[1] 2 Mac. & G. 216, and see also *Hayman* v. *Governing body of Rugby School*, L. R. 18, Eq. 28, and cases there cited.

[2] *Ramsay* v. *Erie R. R. Co.*, 7 Abb., *pr.* N. S. 156, Su. Ct., 1869; Abb. Dig., Vol. II.

the Chairman presiding at such meeting having the casting vote in case of an equality of votes:

4. Elections of Directors shall be by ballot ;

5. Vacancies occurring in the Board of Directors may be filled for the unexpired remainder of the term, by the Board, from among the qualified shareholders of the Company ;

6. The Directors shall, from time to time, elect from among themselves a President, and if they see fit, a Vice-President of the Company; and may also name all other officers thereof.

31. If, at any time, an election of Directors be not made, or do not take effect at the proper time, the Company shall not be held to be thereby dissolved; but such election may take place at any general meeting of the Company duly called for that purpose; and the retiring Directors shall continue in office until their successors are elected.

These two sections, and the power given by section 32,[1] to "one-fourth part in value of the shareholders," to call a special general meeting, or, as it is termed in the English Act, "an extraordinary general meeting," embrace all that is laid down in the Act concerning the meetings of the company. Mixed up with these rules concerning the calling and conduct of general meetings are also some further references to the election of directors.

But first as to the meeting at which such elections are had.

(*a*) *Notice of.* At least twenty-one days notice of such meeting, and of the time, place, etc,, at which it is to be held, must be given in a public newspaper published in the place where the chief office or place of business of the company is situated. By the Quebec Act, the length of notice is ten days,[2] and the English Act,[3] seven days is all that is considered necessary. The longer notice, however, is probably prefera'', especially with respect to companies formed under the Dominion Act, whose ramifications naturally extend over a larger area of country, and whose interests will naturally be much more widely diffused than those of companies formed under the Quebec Act. Under the English Act the system of notifying is different—the notice

[1] *Post.* [2] sec. 10. [3] sec. 52.

being personal instead of by publication in a newspaper as is the case here.

Whether the want of such notice would in all cases invalidate the meeting may be considered doubtful. In *Samuel* v. *Holladay*, in the United States Circuit Court,[1] it was held, that where every member of a board of directors had notice of a special meeting and was in attendance, the fact that the notice was verbal instead of in writing was immaterial. But the fact that one of the by-laws fixes the day upon which the annual meeting for the election of directors shall be held, is not a sufficient notice of the time and place at which the meeting will be held.[2]

(*b*) *Ordinary and extraordinary.* The general meetings of a company may be divided into two kinds, viz.: ordinary and extraordinary. The former are convened at regular and stated periods, as established by the letters patent or by-laws of the company, as annually or semi-annually. The latter, those which are convened at any other time for the transaction of special business not forseen or provided for at the ordinary general meetings. By the Companies' Act (Imp.), 1867,[3] a general meeting of a company must be held not later than four months from the time of incorporation, and the subsequent ones at such times and places as may be prescribed. And by the Act of 1862,[4] it is provided that "All business shall be deemed special that is transacted by an extraordinary meeting, and all that is transacted at an ordinary meeting, with the exception of sanctioning a dividend, and the consideration of the accounts, balance sheets, and the ordinary report of the directors." The object of this enumeration of matters which may be termed ordinary as distinguished from special business (and in which it is somewhat remarkable the election of directors is not included) is apparently to define when the notice must contain a detail of the business to be transacted, as we find by

[1] Kansas 139, Withrow's Corporation Cases.
[2] Abb. Dig., Vol. II., p. 241.
[3] sec. 39.
[4] Art. 36, Sch. 1.

the preceding article that the "General notice of such (special) business shall be given to the members in the manner hereinafter mentioned, that is, in the notices of the meeting. And this is in accordance with the jurisprudence which has established that, when an extraordinary meeting is called for the transaction of business of which notice is necessary, the notice must give substantial information of that which is proposed to be done.[1] And *semble* when special business (as above defined) is to be transacted at an ordinary general meeting.

And therefore, where notice was given of a meeting "for the purpose of considering, and if so determined on, of passing a resolution to wind up the company voluntarily," and at the meeting a resolution was passed, "That it has been proved to the satisfaction of the company that the company cannot, by reason of its liabilities, continue its business, and it is advisable to wind up the same," and appointing a liquidator, it was held, that the resolution was invalid as an extraordinary resolution, and that the notice though sufficient for the purpose of passing a resolution requiring confirmation, was insufficient for the purpose of passing a resolution requiring no confirmation.[2]

And in another case, where the notice was "To take into consideration the position of the company's affairs and the desirability of bringing its operations to a close, and to pass a resolution for the voluntary winding-up of the company, should it be determined to do so," and to appoint liquidators; and at the meeting a resolution was passed in the words of section 129,[3] this was also held to be invalid, and a supervision order which had been made was discharged.[4]

But to understand the effect of these two decisions it must be borne in mind that under the Act a "winding-up

[1] *Garden Gully Co.* v. *McLister*, 1 App. Cas. 39.
[2] Bridfort Old Brewery Co., L. R. 2, Ch. 191.
[3] Providing for the winding up of Companies.
[4] Silkstone Fall. Co., 1 Ch., D. 38.

resolution" may be validly passed in either of two ways, viz.: by a special resolution requiring confirmation at a subsequent meeting, or by a final resolution requiring no such confirmation; and in both of these cases the decision went on the ground, that the notice should have drawn attention to the fact that the proceeding proposed was final, and would require no subsequent confirmation. The general rule is, however, (though not expressly stated in the Statute,) that the notice or advertisement should state the *special business* which it is proposed to consider, either at an ordinary or extraordinary meeting.[1]

(*c*) *Where held.* As a rule the meetings, both of the corporation itself and of the directors, should be held at its chief office and place of business, or at least within the jurisdiction by which it was created. But although it has been laid down that a corporation cannot enact or pass by-laws, or any rule or resolution for its government, except within such jurisdiction,[2] it has also been held, that the directors of a corporation may, as its agents, authorize a conveyance of its real estate at a meeting held outside of the State by which it was incorporated.[3]

(*d*) *Quorum.* The number which at such general meetings shall constitute a quorum for the transaction of business is not fixed by the Statute, but by the next section,[4] is made the subject of a by-law, or could no doubt, though not so stated, be settled in the letters patent. This latter would appear to be the preferable method, as, if left to the company at its first general meeting, the question must necessarily arise: what constitutes a quorum for the passage of such by-law? or, in other words, what constitutes a quorum for the constitution of a quorum? In the absence of any special provision, any number, however small,

[1] But see next section *post*, at the words "duly called for that purpose," and also *post*, concerning the winding up of Companies.

[2] *Mitchell* v. *Vermont Copper Mining Co.*, 40 N. Y. 406, 1876; Abb. Dig., Vol. II.

[3] *Bellows* v. *Todd*, 39 Iowa 209, Su. Ct., 1874; Abb. Dig., Vol. II., and *Paterston R. R. Co.* v. *Cowdrey*, 11 Wall. 459, U. S. Su. Ct., 1870; *Ib.*

[4] *Vide Post.*

is in such case considered by law as constituting a quorum.[1] This, as is pointed out, refers to a body consisting of an indefinite number, as the number of shareholders in a company, but where the whole number is definite, as the number of directors, the rule is that a majority constitute a quorum.[2] Thus in *Wells* v. *Rabway White Rubber Co.*, in the United States,[3] it was said that, in the absence of any different regulations in the charter, etc., a majority of the directors form a quorum, and a vote of the majority of the quorum at a meeting duly convened, determined the action of the board. If there are five directors, a resolution passed by a vote of two, at which three are present, is presumably binding.

The natural rule then to be observed by a general meeting, in the absence of any provision, would appear to be a representation of a majority of the shares issued and taken up, but by Art 37 of schedule 1, of the Imperial Statute of 1862, the quorum is to be ascertained as follows: "If the persons who have taken shares in the company at the time of the meeting do not exceed ten in number, the quorum shall be five; if they exceed ten there shall be added to the above quorum one for every five additional members up to fifty, and one for every ten additional members after fifty, with this limitation, that no quorum shall in any case exceed twenty. Another useful rule, provided by the following article, viz.: Art. 38 is, "If within one hour from the time appointed for the meeting, a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved. In any other case it shall stand adjourned to the same day in the next week at the same time and place; and if at such adjourned meeting a quorum is not present, it shall be adjourned *sine die*."

(*f*) *Chairmanship.* A quorum having been obtained, and ready for the transaction of business, the chairman of the

[1] Thring, Joint Stock Cos., p. 95.
[2] *Ibid*, p. 96.
[3] 19 N. J. 402, 1869; Abb. Dig., Vol. II.

directors, if any, and if present, is the natural chairman of the meeting. If none, then the meeting will choose one from among its members in the ordinary manner. The rules governing the deliberations of the meeting are the same as those governing the proceedings of deliberative assemblies generally, except with respect to the voting, for which there are special rules in all Joint Stock Companies regulations, or all Joint Stock Companies Acts, as by the above section is herein laid down.

That rule in the present case is that

(*f*) *Voting.* Each share represented shall carry a vote. This is a very simple rule, but one involving a little trouble in determining beforehand to how many votes each member present is entitled. Under the English Act,[1] in the absence of any regulations, each member is entitled to one vote (as at any ordinary assemblage), but by article 44 of the schedule of regulations appended to the Act, the following intricate method of voting is laid down: "Every member shall have one vote for every share up to ten, he shall have an additional vote for every five shares beyond the first ten shares up to one hundred, and an additional vote for every ten shares beyond the first hundred shares." Thus, if a member had, for example, two hundred and sixty shares he would be entitled to forty-four votes, thus:

1 each first ten shares	10
1 each for every five between ten and a hundred	18
1 each for every ten beyond the first hundred	16
	44

The object of this system is clearly to strike a mean between the injustice of allowing the holder of one share as much voice in the management of a company as the holder

[1] Sec. 52.

of a hundred, and the injustice of allowing two or three capitalists to control to the prejudice of a large number (it may be) of small shareholders.[1]

The freedom of every shareholder to vote as he thinks best for his own interests is unrestricted, and in the absence of anything to the contrary in the articles (or by-laws) of the company, may vote upon a question in which he is personally interested.[2] So that where the question was whether or not the company should adopt a bill which had been filed to impeach the title of some of the shareholders, it was held that the shareholders in question were entitled to vote.[3]

A lunatic or idiot may, according to the English articles already referred to, vote by his *curator bonis*. And so with minors and married women. But as between the shareholder and the company, the person entitled to the right of voting is the person legally entitled to the shares, the person whose name is on the register. The company have no right to inquire into the beneficial ownership.[5] And if one or more persons are entitled to a share or shares the member whose name stands first in the register of members as one of the holders of such shares, shall be entitled to vote in respect of the same.[6] But *in re* Wedgewood Coal and Iron Co.,[7] *held* that holders of debentures which pass from hand to hand by delivery, must produce them at or before a meeting called to vote upon a reconstruction scheme, in order to be entitled to vote at such meeting.

[1] This, as every one knows who has had any experience in Joint Stock Cos. is frequently witnessed.

[2] London & Mercantile Discount Co., L. R. 1 Eq. 277.

[3] *East Pant Du Mining Co.* v. *Merryweather*, 2 H. & M. 254.

[4] Art. 45.

[5] *Pender* v. *Lushington*, 6 Ch. D. 70; and in *Johnson* v. *Jones*, held that Stockholders who are not such on the day an election is held cannot vote, although they were Stockholders on the day it should have been held; 23 N. J. Eq. 216, 1872.

[6] Act 1862, Sch. 1, Art. 46.

[7] 6 Ch. D. 627.

Again, a person is by all the Companies' Acts,[1] entitled to vote on shares held by him in trust,[2] and *semble*, even where he is trustee for the company itself, if his name appears on the register as the holder of such shares in trust. But, in the United States *held*, that a corporation cannot vote upon stock held by itself, even though held by a trustee as a pledge for money loaned by third persons to the corporation, or, in other words, it cannot be a holder of its own capital stock so as to be entitled to vote.[3] And the chairman also, it would appear, may vote on his shares as any other member, though he has by the section, the casting vote in case of tie, besides. And a person, though not present, may vote by proxy, under the above section, and indeed, according to the universal practice of Joint Stock Companies, though no such right exists at common law, "except," says Thring,[4] "in the case of a peer of England voting in the House of Lords." The object of this privilege is clearly to allow those who are unable to be present at a general meeting, either from sickness, distance, or any other cause, to exercise, through or by means of others, the right which their shares give them of influencing the affairs of an institution in which their means or fortunes are involved.[5]

(f) Must have paid all calls. But the right of voting is suspended if the shareholder is in arrears upon calls made

[1] *Post.*

[2] *Shropshire Union Ry.* v. *The Queen*, L. R. 7 H. L. 496; *Butler* v. *Cumpston*, L. R. 7 Eq. 16; *James* v. *May*, L. R. 6 H. L. 328; *Cruse* v. *Paine*, L. R. 6 Eq. 641, 4 Ch. 441; *Hemming* v. *Maddick*, L. R. 7 Ch. 395.

[3] *Brewster* v. *Hartley*, 37 Cal. 15, Su. Ct., 1869; Abb. Dig., Vol. II. *See* however, *Ennis* v. *West Clare Ry. Co.*, (*ante* p.) in which certain Directors were in the habit of voting on stock registered as held in trust for the Company. But the point was not raised.

[4] Joint Stock Cos., p. 97, following May's Practice of Parliament.

[5] By the Sch. to the Imp. Act 1862, see 49, the instrument appointing a proxy, must be in writing under the hand of the appointer, or if the appointer is a corporation, under their common seal, and shall be attested by one or more witnesses, and shall be deposited at the registered office of the Company not less than seventy-two hours before the time for holding the meeting, and shall not be valid for more than twelve months from its date. For form of appointment see post.

by the company. This provision which is found also in the other Acts referred to, appears to be imposed as a penalty, or rather, as an extra inducement held out to shareholders to attend to the calls made in respect of their shares. But, if not expressly provided by Statute or by the letters patent of the company, no such suspension of their privilege would follow, as the right to vote in general meeting of a company, exists by virtue of their position as members and *interesse's*. The same restriction is by special provision also as we shall see hereafter, placed upon the right of a member to transfer his shares and to obtain recognition and registration of such transfers. And these two restraints have between them, given rise to the rather nice question as to when a call is over due, and to the relation between the words "due," and "payable." The language of the English Act,[1] is "No member shall be entitled to vote at any general meeting unless all calls due from him have been paid." And in Dawe's case,[2] it was held that a member was indebted in respect of a call as soon as the resolution is passed, and before it becomes payable. By Art. 5 of the schedule also, it is provided that, "A call shall be deemed to have been made at the time when the resolution of the directors authorizing such call was passed;" and the same language is used in a subsequent section of the present Act.[3] These difficulties, however, are now generally and should be always avoided by a stipulation in the notice, that the call will be due and payable on and after a certain day, in which case the rights of the shareholder could not be affected until such day had passed without payment having been made.

(*g*) *Manner of voting.* The ordinary manner of voting, unless otherwise stipulated, or unless the voice of the meeting is so unmistakeably in favour of the one side or the other, is by poll or count. "At any meeting mentioned in

[1] Art. 47, Sch. 1.

[2] 38 L. J. Ch. 512.

[3] Sec. 53 *post*.

this section," says the 31st section of the Act (Imp.), 1862, "unless a poll is demanded by at least five members, a declaration of the chairman that the resolution has been carried, shall be deemed conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favor of or against the same." Some rule of this kind is very necessary for the purpose of avoiding doubts and disputes as to the correctness of the chairman's decision, and the loss of time and general dissatisfaction which invariably results therefrom.

An interesting case in point was that of the *Queen* v. *The Government Stock Investment Co.*[1]

In that case, the articles of association contained the following: "Art. 64. Upon all questions at every meeting a show of hands shall, in the first instance be taken; and unless before or immediately upon such shew of hands a poll be duly demanded, as hereinafter mentioned, such question shall be decided by the result of a shew of hands. Art. 67. If a poll is demanded by shareholders qualified to vote and holding in the aggregate, 2,000 shares . . . . it shall be taken, ... and the result of such poll shall be deemed to be the resolution of the company. Art. 75. Votes may be given either personally or by proxy. Art. 79. A proxy shall be . . . . in the following form: I, ————————, appoint to be my proxy at the general meeting, ————————, to vote for me in my name," etc. At a shew of hands at a general meeting for director, F. was declared by the chairman to have been chosen. A poll was then demanded by a shareholder holding twenty shares only, but having proxies for over 2,000. F. failed to get a majority, and another was declared elected. On mandamus by F., it was *held*, that he was entitled to the office, and should be installed.

The election of directors however, is, by the fourth clause of the section, and in accordance with the general

[1] 3 Q. B. D. 442, 2 Leg. News, Mon., 62.

practice by ballot, concerning which no instructions are necessary. But the statement in the third clause that "All questions proposed for the consideration of the shareholders shall be determined by the majority of votes," is in open and palpable contradiction of the provision concerning voting on questions of a change of the constitution referred to in sections 17 and 21,[1] for instance, which provides that the majority necessary to a decision in favor of such a change is "two-thirds in value of the shareholders present," etc.[2] The meaning, therefore, must be held to be that unless otherwise provided, the majority shall govern.

Thus, in *The Silber Light Co.* v. *Silber*,[3] an action being pending against the directors of a company brought by certain shareholders suing in the name of the company, at a general meeting it was resolved, that the company should be wound up voluntarily, and it was at the same time resolved by an overwhelming majority of the shareholders, that the name of the company should not be used as plaintiff in the action. The minority insisting on their right to continue the action in the name of the plaintiff. It was *held*, on the application of the liquidator, that the minority were bound by the wishes of the majority, and that the name of the company must be struck out as plaintiff, but liberty was given to amend by making the company defendants.

(*h*) *Election of Directors, etc.* The provisions concerning the election of directors and of presiding officers from among the directors are much the same as those of the English Act, which, by the schedule of regulations appended thereto,[4] provides further, that no irregularity or defect in the appointment of a director or directors shall tend to invalidate acts otherwise valid done by him or them.

[1] *Vide supra*, p.p. 148 and 155.

[2] As some confusion is possible from the different styles of expression used in the Act it may be as well to point out that a majority *in value* and a majority *of votes* mean under the system of voting provided for by the Act, precisely the same thing.

[3] 48 Law J. Rep. 385.

[4] Art. 71.

(*i*) *Where disputed.* Where an election is disputed or complained of, the proper procedure would appear to be by information and summons, in the nature of a *quo warranto*, though the English authorities are very generally silent with respect to corporations of this kind. The rule in England would indeed appear to be, to confine the proceeding by *quo warranto* to public corporations; nor do there appear to be any cases where an information was granted in reference to the office of a private corporation. But this may have been caused by a too strict following of the Statute of Anne, passed at a time when Joint Stock Companies were unknown. "The English Statute," says one authority,[1] "does not seem to apply to the offices or franchises of private corporations in the aggregate, *and if in England there be any remedy by information in cases of intrusion into or usurpation of such offices or franchises, it must be as in this country, by information in the nature of a quo warranto at the common law.*

(*j*) *Quo Warranto.* This, as we have before observed, is filed in England by the King's Coroner, commonly called the Master of the Crown Office, under the direction of the Court of King's Bench, on application by any subject who shows that a public injury is done by usurpation of any franchises. The same authority quotes Lord Hardwicke as saying, in *The King* v. *Hansel*, "but if it is only of a private franchise, not concerning the Government, as a fair, etc., the Court has *sometimes* refused them, and directed an application to the Attorney-General."

The same authority, however, holds it as settled, that in the United States such information will lie in the case of a private corporation, and quotes the finding and argument of Tighman, C.J., in the case of *The Commonwealth* v. *Arrison, et al.*, in which he said: "We are now to decide a general question on the right of the Court. * * * Now to establish it as a principle that no information can be granted in cases of what the counsel call private corpora-

[1] Angell & Ames, Corprs. 735.

tions, might lead to very serious consequences. Perhaps it might be said that banks and turnpike, canal and bridge companies, are of a public nature, but yet they have no concern with the Government of the country or the Administration. They are no further public than as they have to do with great numbers of people. But if numbers alone be the criterion, it will be often difficult to distinguish public from private corporations. Let us consider churches, for example. In some the congregation is very numerous, in others very small. How is the Court to make the line of distinction? If you say the Court has the right in both cases to grant or deny the information, according to its opinion of the expediency, there is no difficulty as to the right. But if it be alleged that there is a right in one case and not in the other, the difficulty will be extreme. I strongly incline to the opinion that in all cases where a *charter* exists, and a question arises concerning *the exercise of an office claimed under that charter*, the Court may, in its discretion, grant leave to file an information. Because in all such cases, although it cannot be strictly said that any prerogative or franchise of the Commonwealth has been usurped, yet, what is much the same thing, the privilege granted by the Commonwealth has been abused. The party against whom the information has been prayed has no claim but from the grant of the Commonwealth, and an unfounded claim is a usurpation, under pretence of a charter of a right never granted."[1]

In New York it has been decided, that where a person is in office by colour of right, the remedy is not by *mandamus* to admit another having lawful claim, but by information in the nature of a *quo warranto*.[2] By the Code of Procedure of the Province of Quebec,[3] it is provided, that *any person interested* may bring a complaint whenever another person usurps, intrudes into, or unlawfully holds or exercises—1. Any public office, or any franchise or privilege in

[1] Angell & Ames, 736.
[2] *Ib.* 738.
[3] Art. 1016.

Lower Canada. 2. Any office *in any corporation*, or other public body or board; whether such office exists under the common law or was created in virtue of any statute or ordinance. And by the following article, it is provided that such complaint is brought by information, supported by affidavit, on which the leave of the Court or Judge is obtained for the issue of a writ of summons. In Nova Scotia, held not necessary, on an application for *quo warranto*, that an affidavit should be filed by the relator, stating that the motion was made at his instance.[1]

The case of *Henry* v. *Simard*,[2] in Lower Canada, was that of a petition complaining that the defendant usurped the office of director of the Union Bank of Lower Canada, on which a writ issued, but held that it should be addressed to a bailiff of the Superior Court, and not to the defendant. In the case of *Gibb* v. *Poston*,[3] the circumstances being the same, *held*, that to entitle a party to the issue of a writ, in the nature of a *quo warranto*, a *prima facie* case must be first made out on affidavit. But the petition required for the issuing of a writ of *quo warranto*, which sets forth generally the grounds of complaint is sufficient without setting forth the details.[4] But where a petition for *quo warranto* was served on the defendant to show by what right he held the position of municipal councillor, it was *held*, on demurrer to the pleas of the defendant, that the defendant was not obliged to go beyond the demand of the petitioner, and having indicated by what authority he held the office, the demand was refused.[5] But held subsequently on the merits, that as the defendant had neglected to prove that the election itself had been held according to law, and as the burden of proof was on him to show it, that he must give up or be removed from said office, with costs.[6] In *Roy*

[1] *Re* Spence, 1 N. S. 333.
[2] 17 L. C. R. 77.
[3] 16 L. C. R. 257.
[4] *Fraser* v. *Buteau*, 10 L. C. R. 289.
[5] *Belivean* v. *Juneau*, 7 L. C. Jur. 63.
[6] *Ib.* & *Talbot* v. *Pacaud*, 7 L. C. Jur. 67.

v. *Thibault*,[1] *held*, that the Court has a discretionary power to grant or withhold a *quo warranto* information.

By the law of Massachusetts, "any person whose private right or interest has been injured, or is put in hazard, by the exercise of any private corporation or persons claiming to be a private corporation, of a franchise or privilege not conferred by law, may apply to the Supreme Judicial Court for leave to file an information in the nature of a *quo warranto*, which application may be made and heard at a law or jury term in any county where the Court is in session. Leave to file the same shall be granted by the Court. (order having been taken for a summary hearing of the parties), if there appears probable cause to believe that the party complained of has exercised a franchise or privilege not conferred by law, thereby injuring or putting in hazard the private right or interest of the complainant; and upon giving leave to file such information, or at any time before final judgment, the Court may issue a writ of injunction, restraining the defendant and its managers, servants and agents, from exercising the franchise or privilege in question, until the further order of the Court. The information shall be filed in the county where the defendant has its principal place of business; a copy of the information with an order of notice returnable, to be served when and as the Court may direct, shall be served on the defendant and on the Attorney-General."[2] By the Code of California it is provided that, "upon the application of any person or body corporate, aggrieved by any election held by any corporate body, or any proceedings thereof, the District Judge of the district in which such election is held must proceed forthwith summarily to hear the allegations and proofs of the parties, or otherwise inquire into the matters of complaint, and thereupon confirm the election, order a new one, or direct such other relief in the premises as accords with right and justice."[3]

[1] 22 L. C. Jur. 280.
[2] Batchelder, Priv. Corporations, 21.
[3] Proffatt, Corporations, 65.

(*k*) *Meetings of Directors.* Questions arising at a meeting of directors are decided like those at a general meeting, by the votes of the majority of those present. The periods and dates of meeting, the number which shall constitute a quorum for the transaction of business, and other minor matters, are decided by the directors themselves.

(*l*) *Vacancies occurring.* Under this clause may be cited a rather peculiar case which occurred in the Province of Ontario, though not strictly applicable to companies formed under this Act. The Act of incorporation of the Toronto Street Railway Company provided that there should not be less than three directors, each of whom should be a shareholder. The corporation consisted of three shareholders, who were the directors. Upon the death of one of them a meeting was called to appoint a new director, when one S., to whom the deceased director had bequeathed his shares, was declared elected by one of the two directors, although the other refused to concur in the appointment. *Held*, upon demurrer to the bill filed to declare the election invalid and for other relief, that no election was necessary to make S. a director, there being only three shareholders, each of whom was qualified to be a director.[1]

Powers of Directors.

32. The Directors of the Company shall have full power in all things to administer the affairs of the Company, and to make or cause to be made for the Company, any description of contract which the Company may by law enter into; and may, from time to time, make by-laws not contrary to law, nor to the letters patent of the Company, nor to this Act, to regulate the allotment of stock, the making of calls thereon, the payment thereof, the issue and registration of certificates of stock, the forfeiture of stock for non-payment, the disposal of forfeited stock and of the proceeds thereof, the transfer of stock, the declaration and payment of dividends, the number of the Directors, their term of service, the amount of their stock qualification, the appointment, functions, duties and removal of all agents, officers, and servants of the Company, the security to be given by them to the Company, their remuneration and that (if any) of the Directors, the time at which, and place where the annual meetings of the Company shall be held, the calling of meetings, regular and special, of the

[1] *Kiely* v. *Kiely, et al.*, 3 App. Ont. 438.

Board of Directors and of the Company, the quorum, the requirements as to proxies, and the procedure in all things at such meetings, the imposition and recovery of all penalties and forfeitures admitting of regulation by by-law, and the conduct in all other particulars of the affairs of the Company; and may, from time to time, repeal, amend or re-enact the same; but every such by-law, and every repeal, amendment or re-enactment thereof, unless in the meantime confirmed at a general meeting of the Company, duly called for that purpose, shall only have force until the next annual meeting of the Company, and in default of confirmation thereat, shall, at and from that time only, cease to have force: Provided always, that one-fourth part in value of the shareholders of the Company shall, at all times, have the right to call a special meeting thereof for the transaction of any business specified in such written requisition and notice, as they may issue to that effect: Provided also, that no by-law for the issue, allotment or sale of any portion of the unissued stock at any greater discount or at any less premium than what has been previously authorized at a general meeting, or for the payment of the President or any Director shall be valid or acted upon until the same has been confirmed at a general meeting.

(*a*) *In general.* This section embodies, in general terms, the whole powers of the directors and of the company itself through them. As a company acts entirely by its directors, as all the operations of a company, whether decided upon by the managing board or authorized by special resolution of the shareholders, are set in motion by the directors and officers of the company, no very distinct line can be drawn between the powers of the directors and the powers of the company itself. Though not exactly identical they are so merged in each other as to make a discussion of the one, necessarily a discussion of the other.

In a word, whatever the company can do the directors can do, subject, or otherwise, to confirmation by a general meeting of shareholders.[1] The company, itself, cannot act in its own person, for it has no visible personality.[2] So that the only way in which it is possible to speak of the powers of directors as distinguished from those of the company, is in reference to the acts which they may or

[1] Thus, it has been no uncommon thing of late to see Directors voting for and obtaining Acts of Parliament, changing the Constitution of the Company, by a reduction of its capital for instance, without consulting the Shareholders at all in the matter, such Act being simply conditional on the approval of the Shareholders at a subsequent meeting.

[2] *Ferguson* v. *Wilson*, L. R. 2 Ch. 77, 89.

may not do, or contracts which they may or may not enter into without the previous authorization or subsequent approval of the shareholders. The powers of the company itself, are as we have seen,[1] confined to the particuar objects specified in its act or instrument of incorporation. Of the powers of the directors in their relations to the company, some idea may be obtained by considering first, the

(*b*) *Status of a Director.* The position of directors of a public company is that of agents of the company.[2] The directors are agents of the company and in order to ascertain the extent of their authority it is necessary to consider the general law defining the relations of agents and principal.[3]

The rules then governing the directors, the company and the general public, in their several relations one with another, are the rules which govern the relation of principal and agent, and those with whom they deal, everywhere, subject to the provisions of this Act and of the companies' letters patent. And third parties, as well as members of the company, will be deemed to be acquainted with all the provisions of the instrument regulating the company, and any act of the directors exceeding their limited authority will be void, unless it is capable of being and be sanctioned by the company.[4] The directors then are the special agents of the company, in so far as they are restricted in their agency to the particular objects of the company, and by the provisions of the letters patent, but they are general agents also in so far as their powers extend incidentally to all matters not specially provided for, and not foreign to the objects of the company.[5]

[1] *Vide Supra*, p. 126.

[2] *Charitable Corporation* v. *Sutton*, 2 Alk. 400.

[3] Thring, Joint Stock Cos., p. 110.

[4] *Royal British Bank* v. *Turquand*, 6 E. Ll. & Bl. 327. See Thring, Joint Stock Cos., p. 112.

[5] *Smith* v. *Hull Glass Co.*, 8 C. B. 668; *Taunton* v. *Royal Insurance Co* 2 H. & M. 135. See Healy, Joint Stock Cos., p. 126.

Directors have power to do all incidental matters necessary to carry out their powers. Therefore, where they had power to amalgamate, they could give an indemnity necessary to carry out an amalgamation.[1]

Again, directors are said to be *quasi*-trustees,[2] not that there is any legal estate vested in them, but the office is an office of trust, which, if they undertake, it is their duty to perform fully and entirely.[3] Still the position of directors in this respect, is different from that of ordinary trustees, and the court is not bound in every case in which directors have spent money in error, to decree repayment.[4]

The rule, as stated in the United States, is that directors and managers are trustees and agents of the bodies represented by them, and in the case of directors there is an inherent obligation implied in the acceptance of such trust, not only that they will use their best efforts to promote the interests of shareholders, but that they will in no manner use their position to advance their individual interests, as distinguished from those of the corporation, or acquire interests that may conflict with the fair and proper discharge of their duties.[5] And, in another case *held*, that this position of trust which a director occupies towards a stockholder, dissolves him from taking any personal benefit under a contract entered into by the board on behalf of the corporation.[6] But not so as to prevent him making a purchase of stock in the company from a shareholder.[7]

(*c*) *Not individually agents.* But though agents as such directors, they are not agents individually and can by no

[1] Shelford Joint Stock Co., p. 41.

[2] Lindley Part. 3rd Ed. 522, *et seq.*

[3] *York & North Midland Ry. Co.* v. *Hudson*, 16 Beav. 485; and see Healy, p. 127.

[4] *Pickering v. Stephenson*, L. R. 14, Eq. 322, 342.

[5] *Cumberland Coal, etc., Co.*, v. *Parish*, 42 Md. 598, 1875; Abb. Dig., Vol. II.

[6] *European, etc., R. R. Co.* v. *Poor*, 59 Me. 277, Su. Ct., 1871; and see cases cited *supra*.

[7] *Comrs. of Tippecanoe* v. *Reynolds*, 44 Ind. 509, Su. Ct., 1873; Abb. Dig., Vol. II.

means bind the company by their individual acts. Their powers are exercised only by the will of a majority of them, or by the will of a majority of such number of them as constitute a quorum, according to the rules and by-laws of the company. When so acting they bind the company to the extent of the powers indicated in the present section, and to all such other acts as are incidental to them. This is expressed in the first four lines of the section which refer to the company's dealings and contracts with outside persons, and which require no by-law, as do the regulation of the internal affairs of the company referred to in the remainder of the section. The section then naturally divides itself into these two subjects, viz.:

1. The powers of the directors in carrying out the objects of the company, and

2. The powers of the directors in regulating the internal affairs of the company, and in dealing with matters between the company and its members individually.

It must be evident that in the first of these cases at least, the powers of the directors can never be fully expressed. They are coterminous with the objects of the company, and are, for the most part, implied. Given a company formed for certain specific objects, and directors regularly appointed to carry out these objects, their powers, unless otherwise expressly limited, must be held to extend to everything necessary for that purpose.[1]

(*d*) *But bind the company.* And when confined to such acts and within such authority, necessarily bind the company to whatever the directors have undertaken in its behalf. The general result of the cases is stated in this manner.[2] "The company are not bound by any acts done by them which the company has no power to entertain, and *these are the only acts which, if the directors do, are ipso facto void.*" And, again,[3] "The director's general authority extends

[1] *Vide post*, sec. 66.

[2] Buckley Joint Stock Cos., p. 400.

[3] *Ibid.* 401.

to all acts reasonably necessary for management. If they think proper in a prosperous year, to give the company's servants a gratuity out of the profits, this is such an act as is within their general powers."[1] And Shelford,[2] "The directors can do such acts as are necessary to carry out the objects of the company."

(*e*) *May appoint servants.* Thus, it has been held that though the directors have no implied power to delegate their authority to others, they may appoint and remove servants and agents subordinate to them, such as may be necessary for the carrying on of the business of the company. And the rule appears to be the same in the United States. In *Western Bank* v. *Gilstrap*,[3] decided in 1870, it was *held*, that the managing officers of a corporation have a general power to employ attorneys and counsellors, and if in engaging them, they transcend the limits of their powers, they are responsible to the corporation, but the latter is not therefore authorized to repudiate the appointment.

Nor is an entry of such appointment in the records of the company essential to its validity.[4] And in *Lewis* v. *Atlanta Mutual Life Insurance Co.*,[5] *held*, that the inability of a corporation to continue in business is no excuse for a breach of contract with an agent.

May sign cheques. It has been held that a committee may authorize the signing of cheques by a committee of themselves,[6] but this is generally done by the president and secretary, under the rules of the company.

[1] Hampson & Price's Candle Co., 34 L. T. 711.

[2] Joint Stock Cos., p. 41.

[3] 45 Mo. 419, and Abb. Dig., Vol. II.

[4] *Smiley* v. *The Mayor, etc., of Chattanooga*, Su. Ct., Tenn.; Abb. Dig., Vol. II. And see further as to the appointment, etc., of servants; *post*.

[5] 61 Mo. 534, Su. Ct., 1876.

[6] Maitland's Case, 4 De. M. & G. 769 & 23 L. J., Ch. 140.

(*f*) *May buy and sell.* In a couple of American cases,[1] it was said that, "a corporation, by the terms of its creation, has the same capacity to buy and sell that an individual has who is competent to make contracts." But this seems to be a much broader statement of the law than is warranted, either by the Canadian or English statutes, or by the generally recognized principles regulating the powers of joint stock companies everywhere. For all the powers of a corporation or joint stock company, especially that of entering into contracts, is, as we have seen, restricted to the objects of the company; while the power of an individual in possession of his civil rights is practically unrestricted in this respect. Thus, a company under the present Act could not deal either in its own stock[2] or in that of other companies unless specially authorized by its charter so to do; and though a company might be formed for the express purpose of dealing in certain classes of merchandize, a contract respecting other classes of merchandize not connected therewith, or necessary thereto, would be *ultra vires*.[3]

(*g*) *May borrow money.* It has been held also, that directors have an implied power to borrow money, within certain limits, for the purposes of the company. *In re* International Life Assurance Society,[4] Malins, V.C., said: "It has been very strongly urged in this case, that the company having no power to borrow, the borrowing was *ultra vires* and improper, and that therefore no debt was created. I should say, as indeed I have already said on many occasions, that in the ordinary course of transactions of a mercantile concern, whether it be an insurance office or anything else, where the possession of money is essential for the purpose of carrying on the business of the company, and the company finds itself in temporary difficulties for want of money, I cannot consider it beyond the powers of

[1] *Reynolds* v. *Stark Co.*, 5 Ohio 205; and *Hamilton* v. *Lycoming Ins. Co.*, 5 Penn. Stat. 339; and see Proffatt, Corporations, sec 354.

[2] *Vide supra*, p. 143.

[3] *Vide infra*.

[4] Gibb & West's Case, L. R. 10 Eq. 312, 319. See also Healy, Joint Stock Cos., p. 148.

the directors to obtain money from their bankers or others who will temporarily lend it to them for the purpose of preventing that which would be disastrous to all, viz.: the stoppage of the company,—that is to say, I cannot consider it beyond their powers to prevent that disaster by means of loans to a moderate extent, such as would not be unreasonable, having regard to the nature and extent of the business in which the company is engaged, for the purpose of carrying on the business of the company." And in *Curtis v. Learit*,[1] held that every corporation, unless prohibited by law, can incur obligations as a borrower of money to carry on the legitimate business for which it is incorporated, although not specially authorized to borrow by its charter.

It is always desirable, however, says Healey,[2] that the borrowing power of the directors should be defined by the articles of association (or by-laws of the company). But where this is not the case, the effect of the decisions is, that the company will be bound by a reasonable and temporary loan made by the directors to avoid a threatening embarrassment. Where by the articles of association, however, the directors were given power to borrow on the security of the funds or property of the company, it was held this did not empower them to pledge future calls on the shareholders for the same purpose;[3] though they may the proceeds of a call already made;[4] or if it be determined on and not actually made.[5] And so also it has been held, that though the directors may borrow money for the purpose of settling debts already incurred, that their power to borrow is restricted to this, and this on the principle that by so doing they are only substituting the lender for already

[1] 15 N. Y. 9, and see Proffatt corpor., Art. 354.

[2] Joint Stock Cos., p. 148.

[3] *In re* British Provident Life and Fire Assurance Society, *e. p.* Stanley 33 L. J. Ch. 535; and see Healey, J. S. C., p. 150.

[4] International Life Assurance Society, L. R. 10 Eq. 312, and Sankey Brook Coal Company, L. R. 10 Eq. 381.

[5] *Ibid*, L. R. 9 Eq. 721.

existing creditors, to whom the company is liable, without any alteration or extension of its total liability.[1]

And it has been held that a company, unless specially prohibited, may borrow on mortgage of its property.[2] But this would appear to refer to personal property only, at least it would not be considered a power inherent in the directors to pledge the real property of the company for the purpose of raising money. By a subsequent section of the present Act,[3] however, this power is expressly controlled and defined, so that a vote of at least two-thirds in value of the shareholders present or represented at a meeting duly called, is necessary to authorize the raising of money on the credit of the company, either by the issue of debentures or the pledging of the property, real or personal, of the company. But in a Quebec case, in which the directors of a joint stock company had in good faith, and for a sufficient consideration, mortgaged the property of the company in favour of themselves, it was held that though the mortgage could not of itself bind the company, yet it was not absolutely null but only relatively null.[4]

(*h*) *May issue negotiable instruments.* "But this limitation shall not be held to apply to commercial paper discounted by the company."[5] In a number of cases cited by Thring,[6] *held*, that if the instrument of incorporation be silent, a trading company has an implied power to bind themselves by promissory notes or bills; and by section 66,[7] power is expressly given to the directors to bind the company in this manner without the necessity of proving that such negotiable instruments "were made, drawn, accepted or endorsed, as the case may be, in pursuance of

[1] *Vide* Thring Joint Stock Cos., p. 107; and a number of cases there cited.

[2] Patent File Co., 6 Ch. 83, and Gibb & West's case, 10 Eq. 312.

[3] Sec. 85, *post*.

[4] *Pratt* v. *La Manufacture de laine d' Yamachiche*, 2 Q. L. R. 65.

[5] Sec. 85, *post*.

[6] Joint Stock Cos., p. 104.

[7] *Post*.

any by-law, or special vote or order." Nor does the section impose any restriction arising out of the nature or objects of the company, though where no such provision was made the cases reported have turned, to some extent, upon this consideration.

Thus in an action on a bill of exchange, drawn by the secretary of a friendly society in his capacity as such, and endorsed to the plaintiff, it was held not to be within the power of the officers to bind the society to transactions beyond the purposes of its creation.[1] This case, however, must be distinguished from that of a trading association, in which the signing and endorsing of negotiable instruments may be a common incident of its trade and necessary thereto. Thus where the secretary of an insurance company had endorsed certain notes to the plaintiffs, and action was brought on them it was held, *inter alia*, that the publicly recognized officers of such a corporation must, from the nature of things, be entrusted with such powers as will enable them to carry out the ordinary affairs of the institution.[2] And in another case, in the Province of Quebec, against a building society which was not specially authorized to issue negotiable instruments, held that following the decision in the case of *The Corporation of Grantham* v. *Couture*, that the note would be held good as an acknowledgment of indebtedness.[3]

And in the United States, said that a corporation may be held liable upon promissory notes issued by its treasurer in accordance with an usage, as well as upon those which it has expressly authorized.[4] But the general powers of such

[1] *Browning* v. *The British American Friendly Society*, 3 L. C. Jur. 306. But in a case in Ontario, in which action was brought on a note made by a non-trading company it was held that the endorsers (who were in the position of acceptors of a bill) could not set up the want of power in the company to make the note, as a defence to the action. *The Merchants' Bank* v. *The United Empire Club Co.*, 44 Q. B. 468.

[2] *Wood* v. *Shaw*, 3 L. C. Jur. 173.

[3] *La Societe de Construction du Canada* v. *La Banque Nationale*, 3 Leg. News, Mon. 130.

[4] *Re* Gt. Wes. Tel. Co., 5 Biss., 363 U. S. Dis. Ct., Ill., 1873.

company do not extend to endorsing negotiable paper for accommodation.[1]

(*i*) *May take legal proceedings.* The directors have power also in the administration of the affairs of the company to take legal proceedings on its behalf.[2] The manner in which such legal proceedings are entered and conducted is referred to in section 71 of the Act.[3]

(*j*) *Acts ultra vires.* But if the powers of the directors, both expressed and implied, are bounded by—first, the objects for which the company is formed, and again by the terms of the section above referred to,[4] which requires a special authority from the shareholders in certain cases, it is evident that persons may be led into contracts with the company, either through ignorance or fraud on the part of the directors, which are *ultra vires* of the directors. Or again, they may deal with parties holding themselves out as dealing on behalf of the company who may possess no such authority at all. In such cases the question naturally arises how far either party is bound. And the rule is with regard to the objects of the company,[5] that every person is held to have notice of its instrument of incorporation.[6] So that persons dealing with a company should first examine the letters patent by which it was incorporated, and assure themselves that the company itself has the power to enter into such a contract.[7] And in dealing as they must through the directors, they should see that they are properly authorized. But in several cases of dealing with an agent, *held*, that the public had a right to assume that the agent had been duly appointed by the directors, the regulations of the company giving them the power to do so.[8]

[1] *Lafayette Savings' Bank.* v. *St. Louis Stoneware Co.*, 2 Mo. App. 299, 1876.

[2] Shelford Joint Stock Co., p. 42 ; Brice, *ultra vires*, p. 611.

[3] *Vide post.*

[4] Sec. 85 *post.*

[5] As to what may be considered within the objects of the Company. *Vide supra*, p. 133.

[6] Thring, p. 102, and case there cited.

[7] Compare Brice, *ultra vires*, p. 591, and cases there referred to.

[8] *Smith* v. *Hull Glass Company*, 11 C. B. 897.

And so where action was brought against an insurance company for the value of advertising ordered by its agent at Quebec, and the defendants denied all knowledge of the advertising, and all power on the part of the agents to order it, it was *held*, on appeal to the Queen's Bench, that under the circumstances the agent had not exceeded his authority, and the company must be held responsible.[1] But in *Hearle* v. *Rhind* the action was brought by Hearle on warehouse receipts, purporting to be granted by the Moisic Iron Company. These receipts were signed in part by the president of the company and in part by the secretary. The secretary had become insolvent, and Mr. Rhind, the assignee, pleaded that the Moisic Company were not warehousemen, and that the president and secretary had no authority to grant such receipts. There was no evidence to establish such power on the part of the company's officers, or to show that the company was a warehousing company. The Court was unanimous that such receipts so signed did not bind the company, more particularly when there was no evidence of any connection between the pretended indebtedness and the warehouse receipts.[2]

And *in re* County Life Assurance Co., *held*, that there was no obligation to see that *de facto* directors were properly appointed.[3] And where the directors are given the power to enter into such a contract, but subject to the approval of the shareholders expressed by resolution, the public have a right to infer that the resolution was actually passed.[4] "Where," says Shelford,[5] "a person dealing with a company cannot from his position tell whether formalities have been observed or not, the company cannot take advantage

[1] *The Commercial Union Insurance Co.* v. *Foote*, 3 Rev. Cri. 40.

[2] 1 Leg. News, Mon., 62.

[3] L. R. 5 Ch. 288.

[4] *Royal British Bank* v. *Turquand*, 6 Ell. & Bl. 327; *Agar* v. *Athenæum Life Assurance Society*, 3 C. B. N. S. 725; Athenæum Life Assurance Society, *e. p.*; Eagle Insurance Co., 4 K. & J. 549.

[5] Joint Stock Cos., p. 77.

of the neglect of such formalities."[1] And on the other hand, where a person has acted upon a contract with knowledge of the non-observance of a formality, he is precluded from taking advantage of the non-observance.[2]

(*k*) *Nature of formalities.* Some formalities are said to be directory, some discretionary, and some imperative.[3] Thus, they were considered discretionary *in re* The Vale of Neath Brewery Co., Walter's case,[4] in which it was *held*, that where the formalities had been systematically disregarded there must be taken to have been an universal consent to disregard these provisions, and that the transferee in a transfer of shares in which they had not been observed, was not thereby prevented from becoming a member of the company.[5] And, by the decision in *Mair* v. *The Himalaya Tea Co.*,[6] it would appear that a rule requiring the sanction of a general meeting to the dismissal of an agent is directory. But where nine days notice was given instead of ten, of a forfeiture of shares, the forfeiture was declared null.[7] And where a month's notice to directors was necessary on the part of shareholders to call a meeting, held imperative.[8] A call made at a meeting not duly summoned, held bad.[9] Where there was an absence of strict proof that the formalities in calling a meeting had been complied with, held, that the company was bound by a contract founded on a resolution passed at that meeting.[10] And, in another case,[11] Wood, V.C., said: "If the directors have power and authority to bind the company, but certain pre-

[1] An officer de facto is one who is the officer he assumes to be, and yet is not a good officer in point of law. Brice, *ultra vires*, p. 644.

[2] *Ibid.*

[3] *Ibid.*

[4] 3 De G. & S. 119.
See Shelford, Joint Stock Cos., p. 78.

[6] L. R. 1 Eq. 411.

[7] *Watson* v. *Eales*, 23 Beav. 394; 26 L. J., Ch. 361.

[8] *Foss* v. *Harbottle*, 2 Hare. 495; and see section under consideration, *supra*.

[9] *Moore* v. *Hammond*, 6 B. & C. 456.

[10] *Clark* v. *Imperial Gas Co.*, 4 B. & Ad. 315.

[11] *Fountain* v. *Carwarthen & Cardigan R. Co.*, L. R. 5 Eq. 316; 37 L. J., Ch. 429.

liminaries are required to be gone through on the part of the company before that power can be duly exercised, then the person contracting with the directors, is not bound to see that all these preliminaries have been observed. He is entitled to presume, that the directors are acting lawfully in what they do. In another case, Lord Westbury said: "If a company has power to do a thing, and there is only requisite a particular formality, such as the consent of a general meeting, in order to warrant the exercise of that power, and if I find a company dealing with an individual at arm's length, and taking a transfer of shares, duly completing that transfer and entering the transaction in books, so that I am warranted and justified in imputing a knowledge of it to every shareholder, I am fully borne out, not only by the reason of the thing, but by the express authority of the case I have referred to in inferring, as against the company, that the formality which alone is wanting to the exercise of the power, has been either antecedently supplied, or subsequently added to the transaction.[1]

And, in the United States, precisely the same doctrine appears to be held. In *Connecticutt Mutual Life Insurance Co.* v. *Cleveland, etc., Railway Co.*,[2] it was said: "Third parties dealing with a corporation are bound to know the law; that is, they are bound to take notice of the extent of the powers of the corporation, but they have a right to assume, in the absence of anything suggesting enquiry, that it has proceeded regularly in the execution of its powers, and it is not necessary to inquire or decide, whether the acts of the defendant were authorized or ratified by a vote of the stockholders, in accordance with the provisions of the said section of the Ohio General Statutes, if the defendants had the general power to make the guarantees; for these provisos were intended for the protection of the shareholders, and relate rather to the mode or manner of the execution of the power, and the plaintiff had a right to presume that

[1] British Provident Life and Fire Assurance Society, *ex p.* Grady, 32 L. J., Ch. 326; 1 D. J. & S. 488.

[2] 41 Barb. 8, and see Brice, *ultra vires*, p. 640.

the defendant had done its duty and had proceeded regularly in the execution of its power." In another case, the stockholders of a corporation, by a two-thirds vote, resolved to lease the property of the corporation. The board of directors adopted resolutions settling the specifications and providing that public notice should be given, inviting sealed proposals for leasing the property according to the specifications, and reserving to themselves the right to reject any or all of the bids. The proposals received were opened and examined, and rejected. At the meeting at which this was done, another bid was made, received and accepted against the objection of some of the stockholders and directors. *Held*, that the course to be pursued was in the discretion of the directors, and that the adoption of the one mode did not preclude them from afterwards pursuing another.[1] And, in *Samuels* v. *Central, etc., Express Co.*,[2] *held*, that a by-law which is a mere rule for the government of the officers of the corporation in conducting their own business, can have no effect upon the contracts of the corporation with other parties. And where the directors of a company had power to borrow on debentures, held, that notwithstanding informalities, the holders of debentures would be allowed a charge on the property of the company on its winding up.[3]

But as regards directors themselves, who from their position, can tell whether the formalities have been duly observed or not, presumption of such observance will not be made in their favor. Thus, a minute of a general meeting showing that a financial statement of the affairs of the company was submitted to the meeting, was held not to be sufficient evidence to induce the court to presume the assent of the meeting to a deed.[4]

[1] *Ricar* v. *Baquie, et. al.*, Su. Ct., La. 575

[2] Mc. Cahon, 214; Su. Ct., Kan.

[3] *Re* Strand Music Hall, 3 D. J. & S. 147

[4] *British Providence Assurance Co.* v. *Norton*, 3 N. R. 147; 9 Jur. N. S., 1308.

In applying these cases to the provisions of the present Act, care must be taken to distinguish between an absence of the formalities requisite to obtain authority to do a certain act, (as under the 85th section above referred to, or to ratify it as by the present section), and an absence of that authority. Thus, where a person is applied to by directors for a loan ostensibly under sec. 85, the result of the above cases would appear to be, that such person would be held to inquire whether a meeting had been held and a resolution passed, conformably to that section, but not as to the formalities prescribed for such a meeting, or the regularity of its proceedings. The dictum of Lord Westbury, in the *British Provident Life Assurance Society* v. *Grady*, just quoted, would appear to go farther than this, but that was a matter between the company and its shareholders, and does not warrant so broad a conclusion as that a company would be bound by a loan made by its directors, without the authority prescribed by the Act.

(*l*) *Conditional powers.* In speaking of the powers of the directors, we have referred almost entirely so far to their dealings with third persons, but, as it may be seen by reference to the section under consideration, they have the power, in their management of the company, to do many things affecting the relations of the company with its shareholders, conditional on their ratification by the company at its next general meeting, and which we have here termed for convenience, "conditional powers." All these things, it will be observed, are done under the formality of a by-law, and differ in this respect from the powers already discussed, which are subject to no such formality. They differ from the power to borrow, which, by the 85th section, requires an express antecedent authority, in this, that in the latter case such authority would be required for each particular transaction, while a by-law empowering the directors to do the things referred to in the present section, would remain perpetual, subject of course to alteration in the same manner, whenever it might seem desirable in the interests of the company so to alter it. Thus a power to mortgage a cer-

tain piece of land, in order to raise funds for the purposes of the company, would not warrant the directors in pledging other property at another time for the same purpose. Nor would a by-law of the company adopted this year, in conformity with the 85th section, to issue debentures, warrant the directors in making another issue next year. But a by-law duly passed and ratified, empowering the directors to regulate the making of calls for example, would, subject always to alteration in the same manner, be a sufficient warrant for that purpose at any subsequent time, or to any subsequent directors.

(*m*) *May make by-laws.* And while, as a rule, the power of a corporation to make and enforce such by-laws as it deems best for its own interests, will not be interfered with, it has been laid down that such by-laws must not be unreasonable or oppressive. And so in the United States, it has been held that a by-law of a benevolent association, providing as a penalty for the non-payment of dues, that the delinquent should forfeit his right to any benefit while in arrears, and for a period of three months after the payment of the arrears, is valid.[1] And in another case, held that a by-law of a merchants' exchange, which requires members to submit their controversies to arbitration, on pain of expulsion, if they bring suit, is invalid.[2] And such by-laws, it has been held, must be enacted within the jurisdiction where the corporation was created. Thus, in *Mitchell* v. *Vermont Copper Mining Co.*,[3] it was laid down most distinctly, that a corporation cannot enact or pass a by-law or any rule or restriction for its government, except within the State under whose laws it is recognized, and where it has a corporate existence. And, in *Pulford* v. *Fire Department*,[4] *held*, that all by-laws, which are contrary to the general principles of the common law

[1] *Carlin* v. *Father Mathew., etc., Soc.*, 3 Daly 20 N. Y., 1869; Abb. Dig., Vol. II.

[2] *State* v. *Union Merchants' Ex.*, 2 Mo. App. 96; Abb. Dig., Vol. II.

[3] 40 N. Y. S. C. 406, 1876; Abb. Dig., Vol. II.
31 Mich. 458 Su. Ct., 1875; Abb. Dig., Vol. II.

are void; as is also an *ex post facto* by-law, at least in so far as its intended retro-action is concerned.[1]

The directors then within these restrictions may make by-laws, subject to approval, to regulate the

(*n*) *Allotment of stock.* This provision concerning the power of the directors in the allotment of stock is repeated by the 35th section[2] under which the question of allotment will be found fully discussed. The present reference is to the power of the directors merely. The allotment itself being a matter simply of detail in the conduct of the affairs of the company, would naturally be supposed to belong to the directors, and the necessity of a by-law, subject to the approval of the company, must be conceived to refer to the system on which such allotment is to be made, the rate at which the shares are to be issued, the amount of deposit required per share, and matters of similar general application. Thus, by the by-laws it may be established that the shares are to be issued at a premium, or at a discount, or with a preference, or with or without a deposit having first been made by the applicant, matters exercising too important a bearing on the prosperity of the company, and holding out too many temptations to personal advantage to be left entirely in the hands of a few, be they directors or not. But these points being established, the by-laws may empower the directors to allot shares at discretion. This power however, it has been held, the directors have no power to delegate to others, unless authorized to do so.[3] It is often found convenient to entrust matters of this description to one or two of the directors, instead of taking the formal decision of the board on each application, but authority to do this should, in order to avoid difficulty, be included in the by-law.

(*o*) "*The making of calls thereon.*" The power vested in

[1] *Ibid.*

[2] *Vide post.*

[3] Healey, Joint Stock Cos., p. 46; and cases there cited.

the directors to make calls upon the shareholders for instalments of capital, is more expressly stated by section 52.[1] But, though more express, it can scarcely be said to be more explicit. It sets forth nothing more than is included in the words at the commencement of this paragraph. The effect of the latter part of the section is to surround the question with an air of ambiguity, for which there is no foundation; to raise the idea, that there is something behind, by which the powers of the directors in regulating the making of calls, may be fettered and restricted. A brief consideration of the question will, however, shew that this is not the case, at least that there is no other or greater restriction or limitation of their power of making calls than there is of any of the other powers conferred by this section. It perhaps would not be going too far, to say, that there is not so much as some of the matters entrusted by this section to the discretion of the directors, are in many cases regulated by the letters patent of the company, as for example the place where the annual meetings of the company are to be held, the number of directors, the quorum, etc.; while the question of making calls is invariably a matter of detail, which it would be impossible in the interests of those who are to take part in the company to regulate *ab inceptio*. Therefore as all the provisions of the Act respecting the making of calls are contained in the section itself, and the by-laws of the company for the same purpose, are those which the directors themselves frame respecting it, the powers of the directors are exactly those indicated by the present section, viz.: the power of making by-laws to regulate the making of calls, subject to confirmation or rejection by the next general meeting of shareholders.

And in New Brunswick, where an Act incorporating a Joint Stock Company, directed that the stock should be

[1] *Vide post.*

divided into two hundred shares, to be secured in such manner as the by-laws of the company direct, and should be paid in such sums and at such times as the directors should appoint, it was held to be not essential to the right of the company to sue for calls of stock, that by-laws for securing the same should be made, provided the directors who made the call were duly appointed.[1]

The English Act similarly does not pretend to regulate the making of calls, nor even to say in whom the power of making calls shall be vested, leaving it entirely in the hands of the company itself; but the schedule of rules appended to the Act, and intended for the regulation of companies, where not otherwise specially provided for, says:[2] "that the directors may from time to time make such calls upon the members, in respect of all moneys unpaid on their shares, as they may think fit, *provided that twenty-one days' notice at least is given of each call*, and each member shall be liable to pay the amount of calls so made to the persons, and at the times and places appointed by the directors." The restriction with regard to the notice is the only one placed on the authority of the directors even by these rules, which take the place (in the absence of other provision as already stated) of the by-laws of the company. The whole question of calls will be found fully discussed under that head,[3] but it may be stated here that a call made by directors not duly appointed, or at a meeting of directors at which less than a quorum was present, or which from any other cause was irregular, is invalid, and cannot be enforced by law.[4] But where in one case a call was made at a meeting at which the necessary number of directors was not present, but which was confirmed subsequently when a quorum was present, was held good.[5]

[1] Stevens, Dig. 761.

[2] Art. 4, Table A.

[3] *Vide post.*

[4] Buckley, Joint Stock Cos., 361; and cases there cited.

[5] *In re* Phosphate of Lime Co., Austin's Case, 24 L. P. 932.

As board meetings are sometimes held in an informal manner, owing to the difficulty of getting a quorum together at the same hour, it sometimes happens that business is transacted without one, where the business is of such a nature as would not be likely to be objected to by the others. As such proceedings, however, would nevertheless be illegal, the case is of importance, as showing that the Court will not in all cases bind the directors down to the strict letter of the law. It is a question, however, whether the relaxation should not be restricted to confirmation *the same day*, as otherwise the rule regarding the necessity of a quorum would be in danger of being neglected altogether. Cox, in his form of memorandum of association, suggests the following rules concerning meetings of directors: Three shall be a quorum. The chairman, in case of an equality of votes, shall have a casting vote in addition to his original vote. Two directors may at any time summon a meeting of directors, on giving three clear days notice, but no resolution passed at a meeting so summoned shall be valid unless confirmed at the next regular meeting of directors, except it be on some matter of urgency which requires to be done before such regular meeting is held. The directors shall keep an attendance book, in which every director present, within fifteen minutes after the hour appointed for the meeting, shall sign his name; which book, with an analysis showing the number of attendances by each director during the current year of office, shall be laid before every general meeting of the company.

The directors in like manner may make by-laws (subject as aforesaid) to regulate all questions concerning the stock of the company, "the declaration and payment of dividends,"[1] "the number of directors,"[2] etc.

(*p*) *The appointment of servants, etc.*—A general power of appointing officers and servants, such as may be found to be necessary, must obviously be vested in the directors,

[1] *Vide post.*
[2] *Vide supra*, p. 164.

in order to carry on the business of the company. And the power to appoint naturally carries with it the power to regulate all matters incidental thereto, as the remuneration or removal of the persons so appointed. Though the power may be open to abuse in ways which will occur to everybody, still to be obliged to call a general meeting of shareholders for every clerk, agent or servant, whose services might be found necessary, would entail more inconvenience than would be compatible with the proper conduct of the affairs of the company. Any appointment thus made, however, may be cancelled by the shareholders at their next ordinary general meeting, should they see fit so to do, or at any special meeting called for that purpose. The language of the section is, that "the directors *may make by-laws* to regulate the appointment," etc., of the officers of the company. This, however, will not be taken to mean that a by-law is necessary for each act of appointment or removal, but simply the system (where the business of the company is sufficiently extensive to demand it) on which such appointments, etc., shall be made. The usual practice is to leave inferior appointments in the hands of the manager, and to provide for the more important ones by resolution of the board. The section in any case, it may be as well to remark, is permissive throughout, and merely indicates the power of the directors to make by-laws for the purposes therein mentioned, as may be found necessary. The English Act makes no special reference to the appointment of officers and servants, but *In re* The Gloucester, etc., Railway Co.,[1] it was *held*, that though directors have no implied power to delegate authority conferred upon them by the company,[2] they may appoint servants, etc. And even where the articles of association

[1] Maitland's Case, 4 De G. M. & G. 769, and 23 L. J., Ch. 140; and see Healey, Joint Stock Cos., p. 146.

[2] The appointment of officers and servants to certain duties can I think be hardly called a delegation of authority. A distinction must be drawn clearly between authority and duty. The task for instance of keeping the books of the Company must be considered something altogether different from the authority conferred on the Directors to regulate the affairs of the Company, and for which a book-keeper must necessarily be appointed.

provided that a servant should not be dismissed except by authority of a general meeting, it was held that the directors could dismiss him.[1] And where by the Companies Act, 1844, sec. 45, it was provided that bills of exchange and promissory notes should be made and accepted in the names of two directors, and countersigned by the secretary, it was held that this did not prevent the appointment of a foreign agent with power to draw bills on behalf of the company.[2] But where two directors and the manager were appointed to allot shares, this was held to be a delegation of power such as the directors could not make.[3]

The directors may also make by-laws to provide for their own remuneration;[4] the time at which and the place where the annual meetings of the company shall be held; the calling of meetings, regular and special, of the board of directors and of the company, the quorum, the requirements as to proxies, and the procedure in all things at such meetings;[5] the imposition and recovery of all penalties and forfeitures admitting of regulation by by-law,[6] *and the conduct in all other things of the affairs of the company.* These latter words have been italicized as they appear to contain a great deal which might be overlooked in the long enumeration of matters specially set forth. Their effect is to vest in the directors all the powers possessed by the company itself, which are not specially excepted and withheld.[7] Two of these exceptions are referred to in the latter part of the section, which provides that no by-law for the issue, allotment, or sale of any portion of the unissued stock at any greater discount or any less premium than what has been previously authorized at a general meeting, or for the payment of the president or any director, shall be acted upon until such by-law has been confirmed at a general meeting.

[1] *Mair* v. *Himalaya Tea Co.*, 1 Eq. 411.
[2] *Re* State Fire Ins. Co., *c. p.* Mendeth, 32 L. J., Ch. 500.
[3] *Re* Leeds Banking Co., Howard's Case, L. R. 1, Ch. 561.
[4] *Vide supra*, p. 164.
[5] *Vide supra*, p. 183.
[6] *Vide post.*
[7] *Vide*, sec. 85, *post.*

All these powers cease under the English Act[1] upon the appointment of liquidators "except in so far as the company in general meeting, (in case of a voluntary winding up,) or the liquidators may sanction the continuance of such powers." In *The Madrid Bank* v. *Bayley*,[2] however, it was said that in neither case do they cease to be officers of the company. The same would result from an assignment, or the issue of a writ of attachment, under the Insolvent Act of 1875, but it would seem more accurate to describe it as a suspension rather than a cessation of these powers, as on the quashing of the writ or an abandonment of the proceedings they would undoubtedly revive, and the directors be vested with them as formerly.[3]

5—By-Laws.

33. A copy of any by-law of the Company, under their seal, and purporting to be signed by any officer of the Company, shall be received as against any shareholder of the Company as *prima facie* evidence of such by-law in all courts in Canada.

(*a*) *Effect of.*—A Joint Stock Company, as we have seen, has power to make by-laws within the terms of their instrument of incorporation, and of this Act, for its regulation and government; and, as every shareholder is a member of the company, he must be held to be conversant with all its rules and by-laws, or at least to have had notice thereof, and to be bound by them. And it is sufficient by the section in an action against a member to exhibit a copy of any by-law duly signed and sealed, in order to make *prima facie* proof of its authenticity and binding power. But this is only *prima facie*. And in *Keys* v. *The Quebec Assurance Co.*,[4] it was held that a shareholder in a joint stock company may, in an action to account, contest the validity of a by-law made by the directors.

And a decision similar in principle was that of the *Quebec & Richmond Railway Co.* v. *Dawson*,[5] that a share-

[1] Sec. 133, s. s. 5.
[2] L. R. 2, Q. B. 37.
[3] *Vide post.*
[4] S. R. 425, K. B. 1830.
[5] 1 L. C. R. 366.

holder in a chartered joint stock company may, to an action brought against him by such company, plead a noncompliance with its Act of incorporation, and that by reason of such noncompliance the company is not legally in existence. This principle, however, was departed from in the case of a municipal by-law which, it was held, could not be attacked by an incidental procedure, but must first be attacked by the direct procedure indicated by the municipal code.[1] And in a still later case, in the Province of Quebec, Mr. Justice Johnson held that Acts amounting to a forfeiture of the company's charter could not be set up in answer to calls on stock.[2]

A stranger, however, in dealing with the company under a by-law (such, for instance, as the loaning of money under section 85[3]) is not bound to examine into all the proceedings relating to the adoption of such by-law, nor will be affected in the enforcement of a contract made thereunder by irregularities of which he has no knowledge, but is entitled, on communication of a by-law on the contract, to assume that it has been regularly passed and adopted, and even to assume that in dealing with the ostensible directors of the company, that they are sufficiently warranted in what they do.[4] A transcript of all the by-laws must be kept in the books described in the following section.

6—Books to be Kept, etc.

36. The Company shall cause a book or books to be kept by the Secretary, or by some other officer especially charged with that duty, wherein shall be kept recorded—

1. A copy of the letters patent incorporating the Company, and of any supplementary letters patent, and of all by-laws thereof;

2 The names, alphabetically arranged, of all persons who are or have been shareholders;

3. The address and calling of every such person, while such shareholder;

[1] *Parent* v. *The Corpn. of the Parish of St. Sauveur*, 2 Q. L. R. 258.

[2] *Windsor Hotel Co.* v. *Murphy*, 1 Leg. News, Mon., 74.

[3] *Vide post.*

[4] Royal Bank of India's Case, L. R. 4, Ch. 252; and see Buckley, 3rd Ed., p. 489.

4. The number of shares of stock held by each shareholder;

5. The amounts paid in and remaining unpaid, respectively, on the stock of each shareholder;

6. The names, addresses and calling of all persons who are or have been Directors of the Company, with the several dates at which each became or ceased to be such Director;

7. A book called the Register of Transfers shall be provided, and in such book shall be entered the particulars of every transfer of shares in the capital of the Company.

37. Such books shall, during reasonable business hours of every day, except Sundays and holidays, be kept open for the inspection of shareholders and creditors of the Company, and their personal representatives, at the office or chief place of business of the Company; and every such shareholder, creditor or representative may make extracts therefrom.

38. Every Company neglecting to keep such book or books as aforesaid, shall forfeit its corporate rights.

39. Such books shall be *prima facie* evidence of all facts purporting to be thereby stated, in any suit or proceeding against the Company or against any shareholder.

40. Every Director, officer or servant of the Company, who knowingly makes or assists to make any untrue entry in any such book, or who refuses or wilfully neglects to make any proper entry therein, or to exhibit the same, or to allow the same to be inspected and extracts to be taken therefrom, is guilty of a misdemeanor, and shall also be liable in damages for all loss or injury which any person interested may have sustained thereby.

These sections contain all the provisions of the Act directly concerning the books of the company. As a matter of course and necessity, every enterprise of any importance, whether individual or associate, must include books in which a record of its proceedings and of its affairs is kept. But particularly so in connection with joint stock enterprises, in which the means of a lesser or greater number of persons taking no active part in the management of its affairs, and who are dependent upon such books for a knowledge of its affairs, are involved; and also where the liability of the members individually towards the creditors of the enterprise is limited to the amount unpaid on their shares. These causes together render the keeping of books by Joint Stock Companies a matter of so much importance that the legislature has not only made it compulsory to

keep such books, but has described in detail what such books shall contain and exhibit, and imposed penalties for neglect of such provisions. And the importance of such provisions are so obvious that these or similar ones are now found in almost every Joint Stock Companies' Act.[1] The principal questions arising out of them are:

1. What the books shall contain and exhibit.

2. What the rights of members and others with regard to them.

3. What their effect as evidence of their contents.

4. What the penalties attached to violation or neglect of these provisions.

5. What other liabilities attach to the company or its directors with regard to them.

(*a*) *Contents of.*—What these books must contain and exhibit is set forth in the first of these sections. They must contain a copy of the company's letters patent and by-laws. This clause must be read in connection with, and as illustrating to some extent, a subject already discussed, viz: the validity of contracts entered into by the company, or by its officers and agents with outside persons. The terms of these provisions take it out of the mouths of such persons to say, that in dealing with the company or its officers, they had no means of knowing what were the

[1] The English Act, however, does not specify what the contents of such books shall be. It says:—"The register of members commencing from the date of the registration of the Company shall be kept at the registered office of the Company, and except when closed, as hereinafter mentioned, it shall during business hours, but subject to such reasonable restrictions as the Company may in general meeting impose, so that not less than two hours in each day be appointed for inspection, be open to the inspection of any member gratis, and to the inspection of any other person on payment of one shilling, or such less sum as the Company may prescribe for each inspection, and every such member, or other person, may require a copy of such register, or any part thereof, in payment of sixpence for every hundred words, etc." See 32, Act 1862. The Code of California says:—"Every Corporation for profit must keep a book, to be known as the "Stock and Transfer Book," in which must be kept a record of all stock; the names of the stockholders or members alphabetically arranged; instalments paid or unpaid, assessments levied and paid or unpaid; a statement of every alienation, sale or transfer of stock made, the date thereof, and by and to whom, and all such other records as the by-laws prescribe." Art. 378.

powers of the company or its officers to enter into such contracts. If they doubt of the power of the company to do so, under its letters patent, or of the authority of the officers assuming to act for the company, they can easily verify either, if the company have complied with the requirements of these provisions. If such persons neglect to assure themselves in this manner of the powers of the parties with whom they deal, they take the risk of the company repudiating its contract, and relying either on the want of power in itself or of authority in those who acted for it to free themselves. And in transactions between the company and its members also, it is often necessary that the latter should assure themselves of the validity of what they do, by reference to the by-laws and letters patent of the company, and if they neglect this and suffer loss they have themselves only to blame, as it is to protect them against such errors that these provisions are made.[1]

The provisions with regard to the share list and the names, etc., of all the directors, is for the purpose of determining the liability of such persons either to the company or its creditors. To the same end, a separate book is to be kept showing the transfers of shares, with all the particulars relating thereto.

(*b*) *Inspection of books.*—"Such books shall be kept open during reasonable business hours of every day, except Sundays and holidays."

According to the English Act, as quoted above,[2] the company may itself decide the hours during which the public

[1] Curiously enough the provision is that the books are to be kept open for the inspection of the *shareholders and creditors* only, overlooking apparently the fact, that a person is neither a shareholder or a creditor until after the completion of the contract by which the loss may be incurred. But practically, this would give rise to little difficulty, as the Company itself in seeking to deal with a person would be interested in satisfying his scruples by showing him the books. And there is little doubt also but that should the difficulty arise, it would be held that the terms creditor and shareholder included persons proposing to occupy either of those positions. The English Act allows any person to inspect the books on payment of a fee. *Vide note supra.*

[2] *Vide supra note to p.* 225.

may inspect the books, provided they be not limited to less than two hours per day. Several decisions of the English courts, also, are reported, illustrating the rights, principally of the shareholders in this respect.

In *Reg.* v. *Maraquita Mining Co.*,[1] for example, it was said, that a clause giving a right of inspection of the books wherein the proceedings of the company are recorded, does not give a shareholder a right to inspect the book of minutes of the proceedings of the directors. But in the Birmingham Banking Co. *Ex parte* Brinsley,[2] held, that the books and papers of a company are the property of its shareholders *who are entitled to inspect them*, though there is a secrecy clause in the articles of association, and though in the course of inspection they will become acquainted with matters which should be kept secret. But it is their duty not to divulge such information so acquired, and the Court will restrain them, by injunction, from so doing, and will punish them should they offend. Nor can a company refuse a shareholder an inspection of the register because he is the solicitor of parties engaged in litigation against the company, although it be stated on affidavit and not denied that the inspection is required in the interests of his clients, and not in the interest of the company or any member of the company as such.[3] And even where a winding up order had been made, it was held in an action against a shareholder, upholding the order of a judge which gave liberty to defendant, after plea, to inspect the registry of shares, the allotment book and *agenda* of the company.[4] And where shareholders applied to the Court for leave to inspect and take extracts from the books and papers of the company, and to employ an accountant for that purpose, leave was granted, subject to the limitation that only one inspection should be allowed to go on at once, that the in-

[1] 1 E. & E. 289.

[2] 36 L. J., Ch. 150; 15 L. T. N. S. 203. See also Cox, Joint Stock Cos. 7th Ed. 239.

[3] *Reg.* v. *Wilts & Berk's Canal Navigation Co.*, 29 L. T. 992.

[4] *The Lancashire Cotton Spinning Co.* v. *Greatorex*, 14 L. T. N. S. 290 Ex

spection should be made at reasonable times, and that the contents of the documents should not be improperly disclosed.[1] But in another case held that a clause of this kind giving a right to inspect the books, ceases to apply when the company goes into voluntary liquidation.[2]

In the United States the same general rules hold good, viz., that a stock holder in any Joint Stock corporation is entitled, during the usual hours of business, not only to inspect the books, but to take extracts therefrom; nor can the directors by resolution exclude one of the members from such inspection, although they believe him to be hostile to the interests of the institution. "But with respect to a mere stranger unconnected in interest, such books are to be considered as the books of a private individual, and no inspection can be compelled."[3] And in *Williams* v. *College, etc.*, Road Co.,[4] it was said that a demand for an opportunity to inspect the stock book must be accompanied by a notice that the person making the demand is entitled to an inspection, in order to warrant him in suing for a refusal. In a recent case[5] it was held that the corporation was compellable by mandamus to allow an inspection by the stockholder's agent as well as by himself.

And in this country also, the proper proceeding appears to be by *mandamus* to compel an inspection, as decided in *Hibbard* v. *Barsalon*.[6] But in an older case,[7] where a shareholder sued out a writ of *mandamus* to compel the company to allow him to inspect the register of letters, it was held that he had no right to insist upon the inspection, when orders to the contrary had been given by the directors. Under the very express provisions of the above sections,

[1] *Re* Joint Stock Co., W. N. 1866, 341.
[2] *Re* Yorkshire Fibre Co, L. R. 9, Eq. 650.
[3] Angell & Ames, corpors., sec. 681.
[4] 45 Ind. 170, Su. Ct., 1873.
[5] *State* v. *Bienville Oil Works*, 28 La. Ann. 204, and 1 Leg. News, Mon., 408.
[6] 1 L. C. L. J. 98.
[7] *Murphy* v. *Les Remorqueurs de St. Laurent*, 16 L. C. R. 300.

however, no such discretion to the directors could now be allowed, and therefore where, under the Quebec Act, the terms of which correspond with these, penal action was brought against the secretary for refusing to allow an inspection of the books, it was held by the Court of Review, at Montreal,[1] that where two parties (shareholders) apply together to inspect the books, and are refused, though by order of the directors, that each has his recourse, and also that in such case, the defendant may be compelled to answer, although the action is a penal one, and by so doing he may criminate himself.

(c) *Effect of as evidence.*—"Such books," says the section, "shall be *prima facie* evidence of all facts purporting to be thereby stated in any suit or proceeding against the company or against any shareholder." This is according to the common law of evidence, but the value of such evidence it is conceived would vary with the nature of each particular case. Thus, as against the corporation itself, such entries duly made by the proper officer would go near to making absolute proof; while as against the members individually, any evidence would be admissible to show that the entry was wrongly made, and that the defendant could not be bound thereby. But this can only be laid down in the most general way, and by no means as an unvarying rule. The liability to clerical error in the keeping of such books would make them liable to rebuttal at any time on this ground, and the right of any parties to such a suit to show that such an error had been made would be undisputed. And though the minute book for instance would be *prima facie* evidence of the regularity of the proceedings therein recorded, it is undoubted that the corporation itself even might show that such were not irregular. Thus though where the minutes of a meeting are silent as to whether a quorum were present or not it will be assumed that a quorum was present, and that the meeting was perfectly regular, evidence, nevertheless would be admitted,

[1] *Macduff* v. *Blaiklock*, (not reported.)

to show that a quorum was not present, and that the proceedings were illegal.[1] But as against the corporation the strictest proof will be required of this.[2] But where the correctness of the entry and the regularity of the proceedings are admitted, it may be assumed that such entries will be conclusive evidence against it of its organization and existence, of its acceptance of the charter, of all matters relating to the allotment and transfer of shares, and of all contracts entered into with third parties, saving at all times in the latter case its right to show that any contract was beyond the powers conferred upon it by its Charter. But of the fact that such contract was made, the entries, as against the corporation, would be conclusive evidence. As against an individual member, however, it is conceived the evidence of such entries would in no case be conclusive. The principal points which would naturally arise as against a member individually would concern either the subscription and allotment of stock, the transfer of shares, the amount paid in, the making of calls, the forfeiture of shares, the payment of dividends, etc., and all by-laws of the Company in reference to these or other details of its management and affairs. In all such cases the most unrestricted right of producing evidence in contradiction of such entries would doubtless be admitted, except where they were supported by the signature of the person to be bound, as in a subscription list for example.

In such case it appears that parol evidence would not be admitted to vary or contradict the subscription. This has just been the subject of an authoritative decision in the Superior Court, Montreal, in the case of *Wilson* v. *La Société de Construction de Soulanges and divers garnishees.* In that case the garnishees subscribed stock in the defendant's society, and on being garnisheed for the amount due on such stock, contested, declaring that the contract they made with the society's agent was conditional and essen-

[1] Angell & Ames, corpors., sec. 513.
[2] Angell & Ames, corpors., sec. 516.

tially different from what is alleged by the plaintiff. Parol evidence of this, however, was held to be inadmissible. Johnson, J., in delivering judgment, said: "There have been conflicting rulings in this case, one at *enquête* in one way, and another afterwards on motion to revise, in the Practice Court, the other way; but there is not the slightest doubt of the duty and power of the Court, even to decide finally this as well as other points in the case. My decided opinion is, and I have so held repeatedly, and so have other judges here, particularly Mr. Justice Papineau, in the case of the *Compagnie de Navigation* v. *Christin*, that verbal evidence is not admissible in such cases. Abbott, in his Digest of the Law of Corporations, puts the point very plainly—p. 784, par. 101: "Parol evidence is not admissible to show that an instrument containing on the face of it an absolute promise for subscription to stock in a corporation, is conditional. This states the case, and I need go no farther."[1]

This rule, then, may apparently be laid down with regard to the value of such entries as against the corporation itself, and against its members individually, viz., that in proceedings against the former, the clerical correctness of such entries being admitted, they would be conclusive, and parol evidence would not be admissible to prove that they meant something different from what they purported to mean, or that the company, from some other cause, was not to be bound thereby, while as against members individually, the utmost latitude would be allowed to produce evidence to vary or contradict them, except where supported by the signature of the member himself. As against strangers, however, they would of course be of no effect except as evidence that the company had complied with formalities necessary to the validity of a contract.[2] But entries which are made in corporation books of matters relative to any

[1] 3 Leg. News, Mon. 79.
[2] As to formalities, *vide supra*.

property or right claimed by them, can never be evidence for them unless made so by Act of the Legislature.[1]

(*d*) *Production of as Evidence.*—But if the books of a company may make evidence in judicial proceedings, how are they to be produced where the company itself is not interested in producing them? This is a question which pertains more particularly to the law of evidence, but as it appears to be anything but settled, it may be usefully referred to here. The common law writers are silent, or nearly so, with regard to it; and from the wording of Sec. 115 of the English Act of 1862, it would appear that the right to compel a corporation to produce its books and papers, does not exist at common law. In many cases permission has been given, even to strangers, to inspect the books of a company and to take extracts therefrom for purposes of evidence, but this permission must not be confounded with a right to compel the company or corporation to bring up its books. Says Grant,[2] "As has been shown, every corporator has a general right to inspect the books, etc., of his corporation for the purpose of evidence, and upon showing sufficient grounds for requiring the inspection, and a proper demand, and a refusal by the corporation, he will have a mandamus, or a rule to inspect, according to the circumstances of whether there is or is not an action pending; but it will not be considered unless there is sufficient ground for an inspection, if the object, being of a merely private nature, may be equally well attained by giving notice to the corporation to produce the books at the trial, and, on their non-production, adding secondary evidence to prove the thing intended to be shewn from these books." And again,[3] the inspection must in general be asked for a specific purpose of evidence, not for the furtherance of some object which the party desires to effect by the instrumentality of such inspection. Therefore, an inspection will not be granted of

[1] Angell & Ames, corpors., sec. 679.
[2] Corpors., sec. 682
[3] Corporations, p. 313

the books of a trading corporation, though of a public nature, and though the applicant is a corporator, in order that he may subsequently procure a dividend to be declared, nor to ferret out a defence to an action,[1] etc. Says Greenleaf:[2] "The motion for a rule to inspect and take copies of books and writings, *when an action is pending*, may be made at any stage of the cause and is founded on an affidavit, stating the circumstances under which the inspection is claimed, and that an application therefore has been made to the proper quarter and refused."

In all this, it will be noted there is no hint whatever of a right in any one under any circumstances to a rule or order, or summons to a Company or Corporation, to appear in Court with their books and papers in order to furnish evidence of their contents, nor does there appear in any of the English books an instance of such an order having been made.[3] Indeed, there is a case to this effect given by Angell & Ames,[4] in which it was held that the cashier of the bank could not be compelled to produce the books and papers by a subpœna *duces tecum*. The Court said "the course for proving the books and papers of a bank, when it is the adverse party, is to give notice to produce them, and on its non-compliance to show the contents by inferior evidence in the cause." And in the same case said:—"The cases in which the production of papers may be coerced by subpœna are where they are the property of a competent witness." But a corporation cannot be summoned as a witness, and therefore the production of the books under the common law cannot be coerced. And in a much later

[1] In England Acts have been passed for the purpose of authorizing the use of certified extracts from the books of public corporations, such as the Bank of England, as evidence before the Courts. Act (Imp.) 398, 40 Vic., cap. 48.

[2] Evidence, sec. 477.

[3] The only hint I have been able to discover that such a right may exist is contained in the 8th sec. of the Act (Imp.) concerning bank books before alluded to, which says:—"No bank shall be compelled to produce the ledgers, day books, cash books, or other account books of such bank in any legal proceedings unless a Judge of one of the Superior Courts especially orders that such ledgers, day books, cash books, should be produced at such legal proceedings."

[4] Sec. 682

case the rule was distinctly laid down that an officer of a corporation cannot be compelled in a United States Court, by attachment for contempt under Supreme Court rules in equity, to bring its books from its office and produce them before the Master.[1]

The section of the English Joint Stock Companies Act before alluded to, under the title "Extraordinary powers of Court," says *inter alia* "The Court may, after it has made an order for winding up a company, summon before it any officer of the company * * * * and may require any such officer or person to produce any books, papers, deeds, writings, or other documents in his custody or power relating to the company," etc. Under this an official liquidator of the company was ordered to produce certain estimates and calculations respecting the assets of the company which had been prepared with a view to making an application for a call.[2] And other cases of similar import might be cited, but as they were based on the special provision above quoted they would have no bearing on cases under the present Act.

In the United States also the same view of the case appears to be taken. In a case to be presently noticed however, the following American decision given by Abbott in his report of corporation[3] cases was cited in support of a rule against a bank for disregarding a subpœna *duces tecum*. "As a general rule corporate books are admissible only in cases involving the corporation and members and stockholders. They are not competent against strangers or in suits between third parties." But though this decision does not go the length of saying that a corporation can be compelled to bring up its books, a rule was granted in the case of *Cowie* v. *Trudeau* in the Superior Court, Montreal, in which it was cited. In that case Cowie having bought shares in a bank shortly before its suspension brought action against the directors to cover

[1] *Erie Ry. Co.* v. *Heath*, 8 Blatch., 413 N. Y., 1871; Abb. Dig., Vol. II.
[2] *Re* Barned's Banking Co., L. R. 2, Ch. App. 350.
[3] 2nd Ed., p. 617.

his loss, alleging false statements and reports. To prove false statements the books of the bank were necessary. To compel the bank to bring them up a *subpœna* was issued directed to the bank, to which they paid no attention, and an application for a rule was refused. The cashier was then subpœned to bring them up but the directors passed a resolution forbidding it. A subpœna was then issued to the president and directors who also ignored it, and another application for a rule was refused, but the judge who refused this latter application said he would grant a rule against the bank in its corporate capacity and another subpœna issued. The rule which followed was argued not before the Judge who promised it, but another (Jetté, J., in the Practice Court) who, in granting it, said, "If corporations are subject to incapacity resulting from their nature or the provisions of the law which restrict in this regard the exercise of certain rights and certain faculties, and in those incapacities are included the serving as a witness, there is no reason in law to extend the latter incapacity to that part of the obligation of a witness which consists in the production of documents which are in his possession. That although a corporation is incapable of appearing personally in law, the law provides that it may be represented by attorney duly appointed. That on the signification to the bank of the subpœna issued in this case, it was the duty of the bank to appoint an attorney in order to conform with the injunction to produce books, statements and documents."

As to what are or are not part of the books, records, etc., of a corporation, it was said in an American case[1] that "under a statute making the records of the proceedings of a corporation kept by its secretary *prima facie* evidence of the matter therein stated, that what is kept by the secretary as and for the records is intended, and not memoranda used by him in making up such records, although such memoranda are made at the time of the transaction, and are not transcribed into the records for a day or two afterwards."

[1] *Board of Education* v. *Moore*, 17 Minn. 412, Su. Ct., 1871; and see Abbott's Digest of corporations, 617.

But where "the secretary of a corporation bought and paid for, with his own funds, a set of books in which he entered the minutes of the proceedings of the corporation, and received the subscriptions to the stock, it was held that he had no right to retain the books after he ceased to be secretary."[1]

(*e*) *Penalties with respect to.* "Every company neglecting to keep such book or books as aforesaid shall forfeit its corporate rights." This penalty seems to be rather a severe one. It involves the necessity on the part of every shareholder of inquiring into the management of the company, under the penalty of a forfeiture of rights in which he may be very deeply interested and most desirous of having continued. Nor does the section specify any period of neglect as sufficient to entail the penalty, so that an omission of a single day might, in the mind of some one inimical to the company, be a sufficient excuse for bringing vexatious proceedings against it. The penalty for refusing inspection, etc., is also much more severe than under the English Act which prescribes merely a fine of two pounds for each such offence; while by the present Act it is made a misdemeanor and is punishable by imprisonment in the discretion of the Judge. By the Quebec Act the penalty is a fine of one hundred dollars,[2] but by the Dominion Act of 1869, to which this succeeded, the person offending against the provisions of this section was, in addition to being subject as for a misdemeanor, liable to any one who had suffered in consequence of their refusal.[3]

Other penalties. The officers of the company or others would be subject also to penalty under the criminal law of the Dominion for mutilating, destroying or making away with the books, records, etc., of the company.[4]

[1] Abbott *Ib.* in the Sup. Ct. N. J.

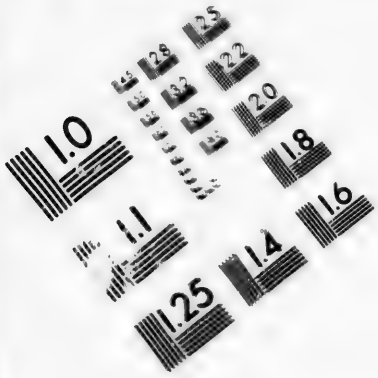
[2] *Vide post.*

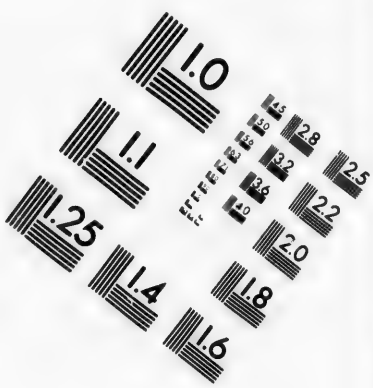
[3] This, however, it is conceived they would be under the common law in any case. Their refusal being illegal, their liability in damages would follow as a matter of course.

[4] 32 & 33 Vic., c 1p. 22; sec. 60.

(*f*) *May be summoned to answer.* But though a corporation cannot be summoned as a witness it may be summoned to answer interrogatories to the same end, in which case it must appoint some one to answer for it and decide what he shall say. And in *Lacroix* v. *Perrault de Liniere*, held that a director of a Joint Stock Company is bound to respond to interrogatories which have been proposed to him.[1] In *the Mayor and Corporation of Swansea* v. *Quirk*[2] interrogatories were administered to the plaintiffs, a corporation, which they elected to answer through their town clerk. The town clerk claimed to be privileged from answering some of the interrogatories on the ground that he was also solicitor of the plaintiffs in the action. Held, that the plaintiffs having elected to put forward their solicitor to answer the interrogatories they could not avail themselves of the privilege which otherwise attached to communications made to him in such capacity.

[1] 3 L. C. Jur. 136.
[2] 49 Law J. Rep. 157.





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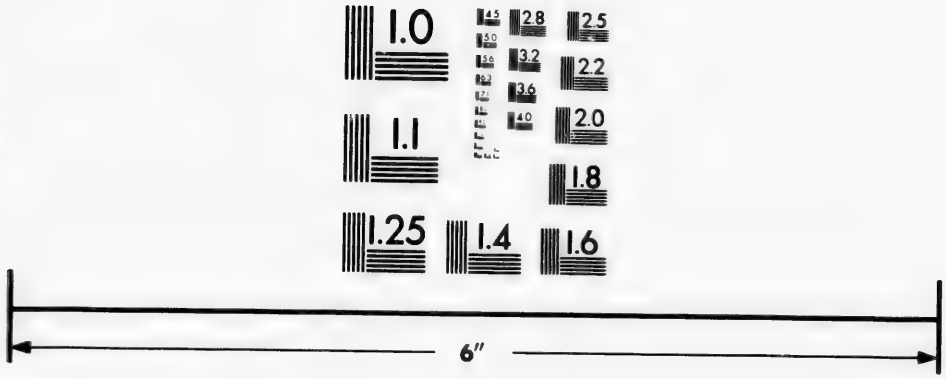

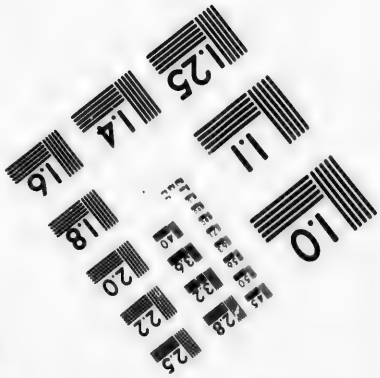

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CHAPTER V.

STOCK, CALLS, ETC.

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I.—NATURE OF.

34. The stock of the Company shall be deemed personal estate, and shall be transmissible as such, and shall be transferable, in such manner only, and subject to all such conditions and restrictions, as by this Act or by the letters patent or by-laws of the Company, are, or shall be prescribed.

The term "stock" at the head of this chapter is used generically. It is intended there to mean the capital of the company in whatsoever manner divided. In a narrower sense, however, it means the funded capital of the company as distinguished from shares simply or unfunded capital.[1] This distinction it will be well to remember as it is in this latter sense that it is used almost exclusively in the English Acts, and by the English writers. In the Canadian Acts, however, the terms stock and shares are used indifferently. In the English Acts, the term "shares" is invariably employed to denote the original parts into which the capital of a Joint Stock Company was divided. In the section of the Act of 1862,[2] corresponding to the present one, for instance it is said, "The shares or other interest of any member in a company under this Act shall be personal estate," etc., while another provides for *the conversion of paid up shares into stock*,[3] etc. "The capital of a company is said to be divided into *shares* when it is contributed and dealt with in parcels of an equal amount, and into *stock* when it is not necessarily contributed or dealt with in parcels of an equal

[1] *Morrice* v. *Alymer*, L. R. 10, Ch. 148; 7 H. L. 717.
[2] Sec. 22.
[3] Sec. 12.

amount."[1] And again "the word *share* seems strictly to denote the rights arising from the contribution, or the liability to contribute, a certain definite proportion of the capital of the company."[2]

In *Harrison* v. *Nines*[3] an American case, held that the words "shares" and "stock" in the Texas Act, 1873, relating to the taxation of bank stock, are used as synonymous terms. And in *Martin* v. *Zellerbach*[4] held that the term "capital stock" within the meaning of the statute embraces the capital on which it transacts business, whether it consist of money, property or other available commodities. The principles regulating them however are, in whatever concerns the rights of the parties thereto, the same whether the term *share* or *stock* be employed.

(*a*) "*Shall be deemed personal estate.*"—"And," adds the English Act,[5] "shall not be of the nature of real estate." "This," says Shelford,[6] "is merely declaratory of what the law would be without special enactment. As between the real and personal representatives the interest of a shareholder in even the real estate of an ordinary partnership is personal property.[7] And in a large number of cases it was held, that even shares in a company holding land were not interests in lands within the Mortmain Acts.[8] And, in a number of others that they are not interest in lands within the 4th section of the Statute of Frauds.[9] Nor are they goods and chattels, within the 17th section, and therefore a parole contract respecting them will be binding."[10]

[1] Digby, Joint Stock Cos., p. 2.

[2] *Ibid.*

[3] 46 Texas 15, Su. Ct., 1876.

[4] Su. Ct. Cal. 140.

[5] Sec. 22.

[6] Shelford, Joint Stock Cos., p. 147.

[7] *Ibid*, following Lindley, Part., p. 667.

[8] *Ibid.*

[9] *Ibid.* In the U. S., however, held to be within the Statute of Frauds. *Fine* v. *Hornsby*, 2 Mo. App. 61, 1876.

[10] Thring, 3rd Ed., p. 52, and cases cited; but in *Compagnie de Navigation Union* v. *Christin*, in Superior Court, Montreal, parole evidence of a guarantee on the part of the Company in connection with a subscription of stock was refused. 1 Leg. News, Mon., 27.

And by others, that they do not confer the right to vote for members of parliament.[1] Enactments have also been passed from time to time with a view of avoiding doubts as to their liability to seizure under writs of *fi, fa, de bonis.* Thus, by the Canadian Statute, 12 Vic., Cap. 23, Sec. 1,[2] it was enacted, "that all shares and dividends of stockholders in incorporated companies, shall be held, considered and adjudged to be personal property, and shall be liable as such to *bona fide* creditors for debts, and may be attached, seized and sold under writs of execution issued out of any of Her Majesty's Courts in this Province, in like manner as other personal property may be sold under execution." And by the Code of Civil Procedure of the Province of Quebec, a like provision is made.[3] But the seizure is only good from the time the writ is served on the company, and not from the time of its delivery to the Sheriff.[4]

(*b*) "*And shall be transferable,*" *etc.*—See Transfer *infra.*

2—Allotment of.

35. If the letters patent, or the supplementary letters patent make no other definite provision, the stock of the Company, or any increased amount thereof, so far as it is not allotted thereby, shall be allotted when and as the Directors, by by-law may ordain.

(*a*) "*If the Letters Patent,*" *etc.*—This is in accordance with clause 6, of section 5, which provides for the regulation of such matters by the letters patent whenever deemed advisable, instead of by by-law.[5]

(*b*) "*Shall be allotted,*" *etc.*—The question of allotment raises a number of points concerning the rights of the creditors of the company against the allottee, and of the allottee against the company, which have been the subject of litigation and decision from time to time. These, however,

[1] Thring, Joint Stock Cos., 3rd Ed., p. 148.
[2] See Con. Stat. Can., p. 819.
[3] C. C. P., Art. 565.
[4] *Hatch* v. *Rowland*, 5 P. R. U. C. 223; Robinson's Dig. 760.
[5] *Vide supra*, p. 117; and see also sec. 32 *supra.*

are apt to vary in different countries, according to the manner of subscription and allotment pursued in each. A common method (and, indeed, the almost universal method in this country) of "taking shares" is by subscription of the company's share-book, which, like the subscription of the memorandum of association under the English Act, 1862,[1] will bind the person subscribing to take from the company as many shares as they have subscribed for, whether or not the shares are actually allotted to them.[2] Another method is by letter of application for so many shares, which however, must be accepted before the applicant is bound. And this acceptance is not satisfied by the mere entry of the applicant's name in the share-book as the owner of a certain number of shares, but the acceptance must be communicated to the applicant, in order to create a contract binding on him. The question is determined on the principles which govern ordinary contracts.

Thus, in a number of cases in the United States it has been held,[3] that the engagement of a subscriber to the stock of a proposed corporation, is subject to the general principles of the law of contracts in so far that it needs a consideration, which is generally the counter engagement to give him the stipulated shares. But the subscription must embody the terms necessary to constitute a complete contract on both sides. A subscription paper, therefore, in which the names of the directors are left blank, or which contains no promise to pay for the shares, cannot be enforced. It will not be void, however, from formal irregularities of description, nor need it be all contained on the same sheet of paper, but may be made out from disconnected memoranda.[4] Nor can a subscriber plead in avoidance of his liability in such case, that he merely signed at the request of the solicitor of the

[1] Sec. 23.

[2] Thring, p. 38; and cases therein cited. A subscription to the articles of incorporation with a statement of the number of shares opposite the name is a sufficient binding subscription for stock. *Phœnix Warehousing Co.* v. *Badger*, 67 N. Y. 294, N. Y. App., 1876.

[3] Abb. Dig., Vol. II.

[4] *Iowa, etc., R. R. Co.* v. *Perkins*, 28 Iowa 281, Sup. Ct., 1869.

company, as an inducement to others to subscribe.[1] And where the document signed by the defendants in an action for calls, read—"We, the undersigned, do hereby subscribe for the number of shares set opposite our respective names, in the capital stock of the Kingston Street Railway Company, and we do each, for himself and his assigns, promise and agree with each other and with the said Company, to pay the full amount of the said respective shares as follows, that is to say, in calls of ten per cent. at such times as by the directors or provisional directors of the company may be determined, or as the construction of the line may require, and in October following, the defendants paid a call of ten per cent. Held a sufficient allotment.[2] There must then be an offer and an acceptance of that offer communicated to the party making the same.[3] This was the result of Pellatt's case,[4] in which Cairns, L. J., said—"I think that where an individual applies for shares in a company, there being no objection to let him have any, there must be a response by the company, otherwise there is no contract." And on this have been based a number of decisions establishing a right on the part of the applicant to withdraw the application at any time before the allotment is communicated to him.[5] And in *re* The Natal Investment Co., Wilson's case,[6] it was held, that the withdrawal may be made orally; and in *Dickenson* v. *Dodds*,[7] the judgment went so far as to say, that it was sufficient if the party to whom the offer is made has actual knowledge that the person who made it has done some act inconsistent with the continuance of the offer, *e. g.*, as in the case of an offer to sell a property, that the person making the offer has since sold to another. And the same principles have been applied in several cases *e converso*. Thus it has been held, that the

[1] *Pickering* v. *Templeton*, 2 Mo. App. 424, 1871.
[2] *Kingston Street Ry. Co.* v *Foster, et al.* U. C. 44 Q. B. 552.
[3] Thring, Joint Stock Cos., 3rd Ed., p. 39.
[4] L. R. 2, Ch. 527.
[5] Hebb's Case, L. R. 4 Eq. 9; Ritson's Case, 4 Ch. 774.
[6] 20 L. T. 962.
[7] 2 Ch. Div. 463.

communication of the allotment need not necessarily be in writing, but there must be either in writing, *or verbally, or by conduct*, something to show the applicant that there is a response by the company to his offer.[1]

There are, however, several cases which seem like exceptions to these rules, especially that requiring notice of allotment, but in most, or all of them, the decision has been influenced by special circumstances. Thus, in Cookney's case,[2] the applicant verbally requested a director to obtain him shares in a company which was in course of formation, and subsequently paid him the deposit money. The shares were allotted to him, but he endeavored to withdraw on plea of want of notice. It was held, that the director to whom he made application was constituted thereby his agent, and did what was necessary to make him a shareholder.[3] And this decision, moreover, appears to be in conflict with Robinson's case,[4] in which he constituted the managing director his agent to apply for the shares, and in which it was held that though agent to apply for the shares, he was not agent to receive notice of the allotment.

But if the applicant stands in such a position that the must be aware an allotment has been made, the notice will be dispensed with. Thus, where the application is made with a view of qualifying as a director, and the applicant, by attending Board meetings, acts on the presumption that the allotment has been made, it will be held sufficient.[5] And where the applicant was appointed auditor and had access to the books it was held sufficient.[6] But in a similar case where the auditor swore he had never looked

[1] Buckley, Joint Stock Cos., p. 47; and cases there cited.

[2] 26 Beav. 6; 3 De. G. & J. 170.

[3] And in New Brunswick held that a person appointed by a number of subscribers to receive and remit their subscriptions to the head office of the Company is not the agent of the Company, but the agent of the subscribers. Stevens' Dig., p. 1096.

[4] L. R. 4, Ch. 330.

[5] Fletcher's Case, 37 L. J., Ch. 49; 17 L. T. 130.
Wheatcroft's Case, 29 L. T. 324.

into the books and was ignorant of the allotment he was let off.[1]

The time from which the allotment runs when communicated by letter was decided in a number of cases to be from the time the letter is posted.[2] This rule, however, seems to have been held (also in a number of cases[3]) subject to a condition that the letter was subsequently received by the party applying or his agent authorized for that purpose; and so where it was shown that from some cause not due to the fault of the applicant himself the letter was not received, the contract was held incomplete. But where the applicant had given a wrong address and for that reason had not received the letter, he was held liable on the contract.[4] These cases appear to be perfectly reconcilable though they have been regarded otherwise. The principle underlying them seems to be simply to throw the burden of proof as to the receipt or non-receipt of the letter on the applicant, in order perhaps to avoid a too great facility of withdrawing, or what would be called in common language, of "backing-out" of the offer. It limits the duty of the company to the posting of a notice of allotment subject to the right of the applicant to show that he never received it. And as the duty of the company ends with the posting of the letter, so the commencement of the contract and the consequent liability of the allottee dates from that moment, subject as aforesaid.[5] This condition subsequent, however, would be held to extend only to a complete failure of carriage and delivery of the notice, and not to delay of arrival until after a certain event. Thus, if a winding-up order was made prior to the receipt of the notice, which however came subse-

[1] Land Shipping Colliery Co., 18 L. T. 786.

[2] See Buckley, Joint Stock Cos., p. 51; and cases there cited.

[3] *Ibid.*

[4] *Ibid*, p. 52.

[5] The rule here stated, however, is opposed to that held in the Province of Quebec in a number of insurance cases, which seem to be parallel to this in which it was adjudged, that a notice of rejection of application did not take effect until receipt by the applicant. *Tough* v. *Provincial Ins. Co.*, 20 L. C. Jur. 168; and *Goodwin* v. *Lancashire Ins. Co.*, 18 L. C. Jur. 1; and see sec. 64, *post.*

quently to hand, of course the applicant would be held. And where the applicant, the very day he should have received the notice, wrote withdrawing the application, he was nevertheless held liable in absence of absolute proof that the letter had never been received.[1] And so also, when the allottee attempted to withdraw on the ground of the non-fulfilment by him of a condition imposed by the company. In that case it appeared that the defendant had signed the stock-book, which was headed with an agreement by the subscribers to become shareholders of the stock for the amount set opposite their respective names and upon allotment by the company "of my or our said respective shares," they covenanted to pay the company 10 per cent. of the amount of said shares and all future calls. The directors subsequently passed a resolution directing the secretary to issue allotment certificates to such shareholders for the shares held by them. The secretary accordingly prepared such certificates which certified to the subscriber that the company, in accordance with his application, had allotted to him so many shares amounting to so much. The certificates were delivered to the company's broker to deliver to the shareholder. There was no evidence to show any formal notification to the defendant of the above resolution or that a certificate of allottment had been issued, and he never paid the 10 per cent. He, however admitted, that he had received notice asking for payment, and he supposed the first notice he received was for the 10 per cent. Held that the evidence was sufficient to prove that knowledge of the acceptance of his offer had reached the defendant and that he was therefore liable.[2]

The liability of the applicant, also, in several cases turned on the effect of a condition attached to the application. Thus, where the condition was that the applicant should get the contract for supplying certain goods to the company which it required and there was no evidence of the

[1] Walls' Case, L. R. 15, Eq. 18.

[2] *Denison* v. *Leslie*, 3 App. (Ont.) 536.

acceptance of the condition, or of acquiesence in the allotment without the condition, he was held not liable.[1] And the same when the condition was of being appointed a director which was not carried out.[2] The same when the condition was of being appointed local manager and being unable to pay the deposit the appointment was refused.[3] The same where the condition was, that the Acts hould be obtained limiting the liability which was not done.[4] And also where it was understood as a condition, that an amalgamation was to be effected and it was not.[5]

And in the United States held, that a subscription may be made on the condition that a prescribed amount should be subscribed before anything is called in, and the condition, if a part of the subscription, will be enforced as between the company and the subscriber.[6]

Sed aliter where there is only a collateral agreement. These cases, however, must be distinguished from those wherein the contract to take shares is absolute but accompanied by a collateral contract or agreement. Thus in Steel's case,[7] the application for shares was made in consequence of representations that balance sheets should be sent to him, and £1 was deposited on each share. An unstamped letter of allotment was sent to him, and he immediately wrote declining to pay calls till the balance sheets were sent. No balance sheet was ever sent, but afterwards a duly stamped letter of allotment was sent to him, which he returned and demanded back his deposit. He continued to demand back his deposit until the company went into liquidation. Held, that he was liable as a contributory in respect of the shares. And in the *Kingston Street Railway Company* v. *Foster, et al,* in

[1] Buckley, 3 Ed., p. 53; and cases there cited.
[2] *Ibid.*
[3] *Ibid.*
[4] *Ibid.*
[5] *Ibid.*
[6] *Ridgefield, etc., R. R. Co.* v. *Brush*, Abb. Dig. Mr. p. 659.
[7] *Re* Whitley partners, 28 W. R. 241.

Upper Canada,[1] in which the defendants pleaded, in answer to an action for calls, an agreement to pay in merchandise, it was held dismissing the plea, that the evidence showed that the agreement to take merchandise was independent of and collateral to the agreement to take shares.

In Elkington's case,[2] the collateral agreement was that 30s. per share should be paid in cash and that subsequent calls should be set off against goods which they were to supply to the company. The allotment was made out but no goods supplied, and on a winding-up it was held, that they had agreed to become shareholders *in presenti*, and were placed on the list of contributories; their recourse against the company on the collateral agreement, the Court held, being quite another question. Gore & Durant's case[3] was pretty much of the same nature. In that case, certain patentees agreed to sell their interest in the patent of a company, and to receive payment partly in in ¡ aid-up shares, partly in shares not paid-up, and partly in cash, with the further stipulation that if the shares and cash were not paid inside two years the agreement should be void. The shares were issued but no cash paid, and the company was wound up within the two years. Held, that the vendors were liable on the unpaid shares. A similar case was that of *Seales* v. *Irwin* in Upper Canada.[4] In that case the plaintiff, a creditor of a company incorporated by letters patent, sued defendant, a shareholder, who pleaded that there was nothing due upon his stock. It appeared that there were nine shareholders, two of whom held a patent right under which the company were to work. The defendant held $5,000 stock, on which he had paid in cash $1,000. It was arranged between the patentees and the other shareholders, that the latter should pay an additional ten per cent. on their stock, making twenty per cent. in consideration of which the patentees, who were said to

[1] 44 Q. B. 552.
[2] L. R. 2, Ch. 511.
[3] L. R. 2 Eq. 349; and see Buckley, 3rd Ed., p. 56.
[4] 34 Q. B. 545, Robinson's Dig. 761.

have a large cash claim against the company for their right, were to pay up the balance of the unpaid stock of the seven shareholders, equal to $2,800, out of this claim. In pursuance of this arrangement, each of the seven gave his cheque to the secretary for the balance of his unpaid stock, which the secretary passed on to the patentees, who accepted them, and gave receipts to the company for the amount. The patentees then handed back the cheques and effects to the secretary, who returned the cheques to the shareholders by whom they were given, it having been agreed beforehand that they were to be so returned and not used. Held, that this transaction was not a payment in full of the stock and that defendant was liable.

But where shares are clearly taken in payment of a debt due, they must be held paid by set-off of the amount of the debt.[1] A number of cases[2] also go to show that where the notice of allotment imposed a term or condition not in the letter of application, that the allotment was of no effect to bind the applicant unless accepted by him in turn. Thus where the notice stated that the applicant must sign the memorandum and articles or the shares would be forfeited, and this was not done, held not liable.[3] And the same where the words "not transferable" were introduced into the letter of allotment, and were held to introduce a qualification not found in the proposal.[4] But where the defendant subscribed for stock in a company about to be formed, and received a letter from the secretary stating that his stock was taken on the same condition as that subscribed by three persons whose names preceded his in the book, and who had appended the condition to their subscription, that the company was to be a hydraulic company, and the defendant did not append such condition, nor was the hydraulic company formed, but a cotton company

[1] Buckley, 3rd Ed., p. 56; and a number of cases there cited.

[2] *Ibid.*

[3] *Oriental Steam Co.* v. *Briggs*, 2 J. & H. 625; 4 D. F. & J. 191; and see Buckley, 3rd Ed., p. 57.

[4] *Claplin* v. *Slack*, 4 Ex. 403; and see Shelford, 2nd Ed., p. 29.

only, held that the defendant having signed the book unconditionally was not entitled to be relieved from liability for calls.[1] And in the United States, held that the actual performance by the company of a condition may bind the subscriber equally with an insertion of it in the paper.[2]

Again an application for shares may be determined and the applicant freed therefrom by unreasonable delay in allotment. Several cases are reported in illustration of this.[3] Thus a delay from the 8th of June to the 23rd November, was held to liberate the applicant.[4] And in another case a delay from the 6th October, 1865, to the 3rd February, 1866, though he made no application to take his name off the register until December, 1867.

An allotment also made in pursuance of an agreement which is *ultra vires* is invalid, but the defect may be cured by acquiescence on the part of the allottee, at least in so far as to debar him from taking advantage of it.[5] Thus in *Wilson* v. *Ginty*,[6] the plaintiff, a creditor of a railway company, sued the defendant as a sharehold for the amount unpaid on his shares. It appeared that the defendant had signed the stock-book of the company for forty shares, but he alleged that this was done upon the faith of a verbal agreement with one L., a prominent director and chief promoter of the company, that defendant should receive the contract for building the road. There was no proof that defendant had received any formal notice of the allotment of the shares, but he paid ten per cent. thereon, because as he alleged, L. told him he could not get the contract unless he paid it. *Held*, that the payment of the ten per cent. made him a shareholder, and, that he could not repudiate his liability on the ground that he had not been awarded the contract, for L. had no power to bind the com-

[1] *Jones* v. *The Montreal Cotton Co.*, 1 Leg. News, Mon., 450.
[2] *B. R. R. & M. R. Co.* v. *Palmer*, 42 Iowa, 222, Su. Ct., 1875.
[3] Buckley, Joint Stock Cos., p. 64.
[4] *Ramsgate Hotel Co.* v. *Montefiore & Goldsmid*, L. R. 1 Ex. 109.
[5] Thring, Joint Stock Cos., 3rd Ed., p. 43.
[6] 3 App. (Ont.) 124.

pany by making such an agreement in his subscription. But the directors have no power to cancel an allotment which is perfect and binding on the allottee,[1] except as under section 55 of the Act,[2] which gives them the right to declare forfeit shares, the owners of which are in default to pay calls. And on the other hand where a person subscribed for stock in a corporation, and certificates in the usual form were issued to him, it was held, that a condition reserving a right to the subscriber to cancel his contract was void as against the other subscribers, though expressed on the face of the contract.

(*c*) *Induced by fraud.* But where a person has been induced by false and fraudulent representations to apply for shares and the shares have been allotted to him, an action will lie to rescind the contract. Not that the contract is void *ab initio*, but it may be avoided by the person so deceived.[4] And this being so the rescission does not date from the making of the contract, but only from the time when proceedings to rescind it were commenced.[5] And this principle holds whether the false statements are issued by the corporation itself officially, or by its authorized agents, *i. e.*, persons authorized to solicit and receive applications for shares; or, in any case, if the company have assumed the contract and benefitted or seeks to benefit by it. This is the effect of the decision in the *Western Bank of Scotland* v. *Addie*,[6] in which Lord Chelmsford said "that where a person has been drawn into a contract to purchase shares belonging to a company by fraudulent misrepresentations, (or by fraudulent concealment[7]) of the directors, and the directors in the name of the company seek to enforce that contract, or the person who has been deceived institutes a suit against the

[1] Fletcher's Case, 37 L. J., Ch. 49; 16 W. R. 75; 17 L. T. 136, Buckley, p. 67.

[2] *Vide post.*

[3] *Melvin* v. *Lamar Ins. Co.*, 80 Ill. 446, and 1 Leg. News Mon., p. 12.

[4] Abb. Dig., Vol. II., p. 659.

[5] *Reese River Mining Co.* v. *Smith*, L. R. 4 H. L. 64, 73.

[6] L. R. 1, H. L. 145, 157; Nicoll's Case, 3 De. G. & J. 387. See *Oakes* v. *Turquand*, *supra*, p. 67, 69.

company to rescind the contract on the ground of fraud, the misrepresentations are imputable to the company, and the purchaser cannot be held to his contract, because a company cannot retain any benefit which they have obtained through fraud of their agents."[1] But if an officer of the company, not being a director, answer inquiries which do not properly fall within the business of the company deputed to him, the representations of such officer cannot in the absence of proof be imputed to the directors.[2] Nor will the representations avail to set aside the contract unless they were present in the mind of the applicant as an inducement to enter into it.[3]

In the United States the effect of the decisions may be stated in general terms to be, that a contract of subscription may be avoided by proof that the subscriber was induced by fraud to make it, upon substantially the same principles as apply between individuals. A corporation cannot retain the benefit of a contract which its soliciting agent has procured by representations as to material facts fraudulently made with knowledge of their falsity. And in *Paddock* v. *Fletcher*,[4] *held*, that the promoters of a proposed corporation who made the false representations, as well as the company itself, are liable in action of damages for deceit in inducing the plaintiff to subscribe. And in Upper Canada, a plea that defendant became holder of the shares by subscription, and was induced to do so by fraud of the company, and that he had received no benefit from and had repudiated the shares, was held good on demurrer.[5] But held in the Province of Quebec, where misrepresentation was pleaded in answer to an action for calls, that verbal testimony of such misrepresentation could not be set up

[1] Bucklev, 3rd Ed.; p. 87.

[2] *Ib Partridge* v. *Albert Life Ins. Co.*, 16 Sol. J. 199.

[3] *Pulsford* v. *Richards*, 19 L. & E. 387, 391; Nicoll's Case, 3 De. G. & J. 420; *Western Bank of Scotland* v. *Addie*, L. R. 1; P. H. 145, 158.

[4] 42 Ver. 389, Su. Ct., 1869.

[5] *Prov. Ins. Co.* v. *Brown, et al*, 9 C. P. 286; Robinson's Dig. 734, and *de supra*, Cap. II., p. 63, *et seq.*

against the written consent of the subscriber.[1] And a winding up order will act as a bar to the remedy of the allottee unless proceedings to repudiate and set aside the contract have been instituted.[2]

(*d*) *To be paid in cash.*—By section 83[3] it is provided that all shares so allotted shall be held to be payable in cash, "unless otherwise determined by a contract duly made in writing, and filed with the Secretary of State at or before the issue of such shares."[4] This provision, which is not found in the Act of 1865, nor in the Quebec Act, nor in the Ontario Act, is copied apparently from the Imperial Act of 1867, and has the effect of closing one avenue to fraud on the part of promoters and directors. Under this section, it is no longer permissible to accept shares in a company in order to get rid of a property acquired for the purpose of making a large profit at the expense of the company, or in order to secure the custom of the company, on the understanding that they are to be paid for in goods as wanted, which was the arrangement in Pellatt's case and Elkington's case.[5] At least it is only permissible to do so by a regular formal contract registered with the Secretary of State, in order that any one who may be interested may inquire into the nature and terms of such contract, and govern themselves accordingly. The object of the provision broadly stated is, clearly, to avoid bogus allotments, or, to speak more accurately, to put it out of the power of persons accepting such allotments, to avoid liability by pleading an agreement between themselves and the directors, that the shares so allotted were to be paid for otherwise, than in cash. On the other hand, it would necessarily be

[1] *National Insurance Co.* v. *Chevrier*, 1 Leg. News, Mon., 591.

[2] This is the English rule, though in the U. S. no absolute rule of this kind appears to have been adopted. 1 Am. Law Rev. N. S. 208; and Thompson's "Liability of Shareholders."

[3] *Vide post.*

[4] But in a New Brunswick case, held that a Joint Stock Company may take a promissory note from a stockholder for an amount due by him on an assessment on his stock, there being nothing in the Act of incorporation to prohibit it. Stevens' Dig., p. 765.

[5] L. R. 2, Ch. 511, 527; and see Colliers Law of Contributories, 21.

considered too great a restriction of the company's actions and transactions to prohibit that which might be for the benefit of all concerned, to take away from it the right which exists between individuals of making any agreement consistent with public policy and good morals. Thus, it might be for the interest of all parties, that shares should be allotted to an individual or a firm in consideration that they should be paid for in a certain manufacturing material, for instance, at a certain rate, to be delivered from time to time as required by the company. This was the agreement in the cases last referred to, and which, though regarded as perfectly right and proper as between the company and the parties, was held not to relieve the latter on a winding up, from liability in cash to the creditors for the total amount unpaid on their shares. And so, *in re* The Church and Empire Fire Insurance Co.,[1] a company allotted a proprietor of a newspaper a number of shares in consideration of the newspaper advertising the company's prospectus, etc. The allotment was made April 7, and the first advertisement was inserted April 8. No contract was registered as required by the company's act. Held, that the shares were not paid for in cash, and the holder must be placed on the list of contributories as a holder of shares not paid for. And where the mortgagees of an estate which was, by an unregistered contract, contracted to be sold to a company for a consideration partly in cash and partly in paid up shares, agreed with the vendor to accept payment of their mortgage debt partly in cash and partly in paid up shares, and in pursuance of this agreement some of the vendor's shares were allotted to them as fully paid up, and they released their charge, it was held upon the winding up of the company that they must be treated as holders of unpaid shares.[2]

And in *The National Insurance Co.* v. *Hatton*, in the Province of Quebec,[3] in which a similar agree-

[1] Pagin & Gill's Case, 6 Ch. D. 681; and Andress' Case, 8 Ch. D. 126.

[2] *Re* the British Farmers' Pure Linseed Oil Cake Co., Potter & Brown' Case, 48 Law J. Rep. 56.

[3] 24 L. C. Jur. 26, in App.

ment was pleaded to an action for calls, held that an agreement between a promoter of a company and a subscriber for shares, that the latter shall pay for his stock in services, will not bind the company. Nor can such an agreement be proved by parole. In *Compagnie Navigation Union* v. *Christin & Valois*, defendant *en garantie* in the Superior Court, Montreal, Johnson, J., said, "The plaintiff *en garantie* alleges, that the defendants *en garantie* who were directors of the company, got him to subscribe for the stock on an express guarantee by them that they would take merchandise in payment. The only point is, whether the guarantee can be proved by parole. The learned judge before whom the motion to revise the ruling at *enquete* was argued, maintained the objection to such evidence. So do I."[1] The judgment in this case, it will be observed, decides not only the necessity of a writing to bind the company and its creditors to such a contract, as provided by the 83rd section of the present Act, but the personal liability of the directors without one, and will no doubt have the effect of checking any temptation to plead bogus agreements in answer to calls by the company. Nor can any injustice be urged on the part of the subscriber, if the agreement be *bona fide*, as the proper course under any circumstances would be to reduce such a contract to writing, and when that is done, and the contract is registered according to the provisions of section 83, both the company and its directors, creditors, etc., are bound, and the allottee incurs no liability beyond the terms of such agreement. An even where, by inadvertence, the contract was not registered until after the issue of the shares, it was held immaterial, there being no fault or evidence of bad faith on the part of the parties thereto.[2]

[1] This case must be distinguished from agreements to take shares simply which are not within the 17 sec. of the Statute of Frauds; *Vide supra*, p. 240. Here the contestation was not as to the agreement to take shares (about which there was no doubt), but as to the agreement on the part of the directors to take merchandize in payment of such shares, which was quite another and separate agreement, and should have been in writing in order to be proved.

[2] *In re* Ambrose Lake Tin and Copper Co., Clarke's Case, 8 Ch. 635; 2 Leg. News, Mon., 62.

Another question which arises in connection with this part of the subject under section 83, is, What is payment in cash? In Fothergill's case.[1] Lord Selborne said, "I should certainly not be disposed to place any narrow or technical construction upon the words 'payable in cash,' as used in the Statute. But to hold, that shares payable in cash can be paid by an agreement to set-off against them other shares deemed to have been paid up in the same company, which the company could not lawfully buy, and of which the value must be wholly speculative, or even by ascribing to them the assumed value of land agreed to be sold to the company for any other than a money consideration, presently payable in cash, would be to render this enactment absolutely nugatory." But in Spargo's case,[2] it was held that any *bona fide* transaction between a company and a shareholder which, if the company brought an action against him for calls would support a plea of payment, is payment in cash within the section. And in Norton's case,[3] *held*, that where paid-up shares in one company are substituted for paid-up shares in another company, without the option of receiving cash, there is held to be no return of capital, and there will be no liability on the winding up of either company, where the nominal amount of the new paid-up shares given in exchange for the old ones, is not greater than the nominal amount of the old paid-up shares. And a payment in cash is well and properly made if an amount in cash is due and payable to the shareholder in respect of property already sold to the company, and such amount is set off against the amount due on the shares;[4] or, if the company being indebted in a sum in cash to a third party, payment of a portion thereof is at his request, made by crediting a shareholder with a sum sufficient to make his shares fully paid up;[5] or if the company having entered *bona fide* into an

[1] L. R. 8, Ch. 280.
[2] L. R. 8, Ch. 407; 21 W. R. 306.
[3] 11 W. R. 1007.
[4] Maynard's Case, L. R. 9, Ch. 60.
[5] Ferrao's Case, L. R. 9, Ch. 355.

arrangement with a shareholder under which a sum in cash becomes payable to him, payment is made by crediting the amount to the shareholder upon his shares, notwithstanding that the company be shortly afterwards wound up.[1]

Thus a company entered into a contract with a newspaper proprietor for advertisement by him of their prospectus in his newspaper, provided he was willing to accept payment in fully paid up shares. He inserted the advertisement and sent the company an account for the amount due in respect thereof, which was accepted by them, and they subsequently alloted to him fully paid up shares to the amount of the sum shown in such account. The contract was not registered in pursuance of the companies' Act, 1867, section 25. The company was afterwards wound up. *Held*, that inasmuch as the work contracted for had been actually done when the shares were allotted, there was at that time a debt payable by the company in money to the allottee, in respect of which he could have sustained a plea of payment in action by the company for calls, and that the shares had therefore been paid up in cash within the principle of Spargo's case.[2] And in *ex parte* Bentley[3] an agreement was entered into between a company and one of its directors that, in consideration of his giving up certain benefits, the directors should receive a sum equal to three-fourths of the amount payable in his shares, and that sum was credited to him in the books of the company as having been paid up. *Held*, that the amount so credited was equal to a cash payment by the director within section 25 of the Companies' Act, 1867.

But these cases of set-off must be distinguished from those of a contract for the future delivery of the consideration of the price of shares, which requires to be in writing and to be

[1] Adamson's Case, L. R. 18, Eq. 670: and see also Buckley, 3rd Ed., p. 445.

[2] *In re* The Government Security Fire Insurance Co., *ex parte*, White 48, Law J. Rep. 236.

[3] *Re* Regent United Service Stores, L. R. 22, Ch. D. 850; 41 L. T. 500; 28 W. R. 165.

registered under section 83; for the consideration consisting of a sum already due to the allottee, the payment is to all intents and purposes a cash payment, and requires no registration. And the result is the same where the consideration or payment is the price of property sold to the company for cash simultaneously with the allotment.[1]

But where the agreement is executory only and nothing has passed to the company, and there is no registration, the allottee will be held liable. This was the result in a late case[2] in which B. & H. agreed to sell a colliery to a company for £5,115, to be paid or satisfied as follows: £500 in cash to B. B., £1,500 by issuing 300 shares of £3 each, fully paid up to B. B.; and as to balance either by cash, at the option of the company or H., by issuing 623 shares of £5 each, fully paid up to H. The 300 shares and the 623 shares were issued to B. B. & H., according to the agreement. The company afterwards came to be wound up, when it was discovered that, through the omission of an agent, the contract had not been registered as required by the Act. At the date of the winding up, 134 of the shares were in the hands of L. B., a transferee, for value, without actual notice of the non-registration; and B. B.'s 300, and 450 of H.'s shares were in the hands of L. B. as executor of B. B. Of these 450 shares, 100 had been purchased by B. B. from L. B., a transferee for value without actual notice; and other 230 shares had been purchased by B. B. from other transferees for value without any notice. B. B. was the chairman and L. B. the solicitor of the company from its formation. At a date subsequent to his becoming a transferee, L. B. had actual notice of the non-registration, but B. B. never had any actual notice. *Held*, that neither the 300 nor the 623 shares were issued in respect of a sum of cash due and presently payable by the company; that these shares could never be in the hands of B. B. or L. B. without notice of

[1] Buckley, Joint Stock Cos., 3rd Ed., p. 446.

[2] *In re* The Stapleford Colliery Co., (Lim.,) Barrows' Case, 28 W. R. 270.

the blot upon them; and that the name of L. B. (as to 134 shares for himself and as to 750 as executor of B. L.) ought to be placed on the list of contributories in respect of the whole number as unpaid shares.

(*c*) *Paid up shares.*—But where no consideration passes to the company, and the shares allotted purport to be paid up shares, there is of course nothing to set off, and, in the absence of registration, the allottee will be held liable on them. Thus, in a recent case, two persons in July, 1866, signed the memorandum of association for one share each at the request of the promoter, and on the understanding that they should not be called upon to pay anything in respect of them; and in 1867, when they were asked to pay calls, they requested the directors to cancel the shares, and the directors did so. The directors had power under the articles to cancel shares on non-payment of calls. Several years afterwards, the company being ordered to be wound up, the parties and their executors (one of them being dead) were placed on the list of contributories by the liquidator, and on a contestation, the action of the liquidator was maintained.[1]

And in the United States, held that the officers of a corporation are chargeable with fraud if they receive, in payment of stock, property at a valuation known to be in excess of its real value, and in consideration thereof issue paid up certificates of stock.[2] But if the shares are transferred, and the transferee knows nothing of the circumstances, the certificate of the company that they are paid up shares will carry him free.[3] Thus, under a contract not registered, shares in the company were allotted to the person with whom the company made the contract, and were duly registered by the company as such. The shares were subsequently transferred for value as fully paid up shares to another, who had no notice of any irregularity

[1] Esparto Trading Co., 28 W. R. 146.

[2] *Osgood* v. *King*, 42 Iowa 478, Su. Ct., 1876; Abb. Dig., Vol. II.

[3] Buckley, Joint Stock Cos., 3rd Ed., p. 446; and cases there cited.

in their issue. On the winding up of the company, held (reversing the ruling of Hall, V. C.), that the company was estopped to deny that the shares were fully paid up, and that the official liquidator could not have the transferee put upon the list of contributories as a holder of shares not fully paid up.[1]

And in *McCracken* v. *McIntyre*, decided in the Supreme Court, Canada,[2] the result was the same. In that case certain shares in a company incorporated by letters patent issued under 27-28 Vic., Cap 23, were allotted, by a resolution passed at a special general meeting of the shareholders, to themselves in proportion to the number of shares held by them at that time, at forty per cent. discount, deducted from their nominal value, and scrip issued for them as fully paid up. G., under this arrangement, was allotted nine shares, which were subsequently assigned to the appellant for value as fully paid up. Appellant enquired of the secretary of the company, who also informed him that they were fully paid up shares, and he accepted them in good faith as such, and about a year afterwards became a director in the company. The shares appeared as fully paid up on the certificate of transfer, whilst on each counterfoil in the sharebook the amount mentioned was shares, "2—$300, $600." Held reversing the judgment of the Court of appeals for Ontario, that a person purchasing shares in good faith, without notice, from an original shareholder as shares fully paid up, is not liable to an execution creditor of the company, whose execution has been returned *nulla bona*, for the amount unpaid on the shares. But in Crickmen's case,[3] held that if the transferee take the shares with notice of the facts, he is liable; but if he take them in the ordinary course of business, the burden of proving that he had notice, will be on the person urging it against him.[4]

[1] *In re* Farmers Pure Linseed Cake Co., 7 Ch. 533; 1 Leg. News, Mon., 367.

[2] 1 Su. Ct. Can. 479.

[3] L. R. 10, Ch. 614.

[4] *Burkinshaw* v. *Nicolls*, 3 App. Cases, 1004.

But *in re* the Gold Company,[1] held that this right may be lost by laches on the part of the transferee. In that case, a company was incorporated in 1873, with a capital of £100,000 in shares of £1 each. The 11th clause of the Articles of Association provided that if it should appear to the directors that the capital of the company for the time being subscribed, should be sufficient for the purposes of the company, they might allot any shares which might then remain unallotted, to and among the then shareholders, in proportion to the number of shares respectively held by them; and such shares might be allotted as fully or partially paid up shares, although no moneys might be received by the company in respect of such shares from any allottee thereof. Six weeks after the incorporation of the company, when only twenty-five thousand shares had been allotted, of which nearly twenty-two thousand were allotted as fully paid up shares, pursuant to duly registered contracts, the directors passed a resolution in conformity with the 11th clause of the articles, and thereupon and by virtue of a duly registered agreement, the remaining seventy-five thousand shares of the company were rateably allotted as fully paid up shares amongst the then existing shareholders of the company. The concern was then puffed up, and some fifty thousand of their paid up shares were sold in the market as shares of £1 each at a premium, of which shares A. bought one hundred. Subsequently the company, which was a hopeless failure from the outset, went into voluntary liquidation. Nine months afterwards, A. presented a petition for a compulsory order, alleging, amongst other things, great irregularities in the formation of the company, and in the conduct of the directors; that no consideration was given for the twenty-two thousand shares which had been allotted as fully paid up; that the 11th clause of the articles, and the proceedings thereunder, were a fraudulent scheme to float the company; and that the voluntary winding up was improperly obtained and under the control of guilty parties, and was intended to screen them and pre-

[1] 48 Law J. Rep. 281.

vent investigation. The petition was supported by the bulk of the shareholders, but not by any creditor. Held, that the case was wholly outside the winding up Acts, for that although the 11th clause was a most improper provision, and one calculated to be the means of fraud, no fraud or wrong had been committed against the company or its creditors; and even if the petition was sustainable, A. was debarred from relief by his own laches.

Another deduction which had been made from the cases arising under this section is, that the contract referred to, which requires to be in writing and to be registered, must be a contract not merely between the shareholders *inter se*, but betwen the company and some third person, that is some one acting in his individual character, and not merely a person co-operating in the formation of the company.[1]

(*f*) *What is an issue of shares?* The question of what constitutes the issue of shares under the section[2] has also arisen in some cases, in deciding whether or not the registration was made prior to the issue, as required by the section. "It is not," says Buckley,[3] "necessarily either the allotment of the share, or the issue of the certificate, that constitutes the issue of the share. The question is whether the shareholder has or has not been put in complete possession of his share, and this may be so although some formal act may not have been completed." Thus, in Blyth's case[4] it was decided that shares may have been issued, but for which no certificates have ever been issued; and on the other hand shares as to which a resolution has been made may not have been issued. In Pritchard's case,[5] it was said that shares issued as paid up under a registered contract, and the persons to whom they

[1] Buckley, p. 44; and cases there cited.
[2] *Vide* sec. 83, *post*.
[3] p. 450.
[4] 4 Ch. Div. 140.
[5] L. R. 8, Ch. 956, 961.

are allotted, should be so described in the contract as to be capable of identification by persons inspecting the contract and the register of shareholders. But if shares intended to have been issued as fully paid up have been issued without registration of contract, and it be shown that the allottees were ignorant of the omission, the Court will, with the consent of the company, make an order to rectify the register by striking out the shareholders names, and that the shares shall be re-issued after registration of the contract.[1]

The decision in this case, however, it is evident, must be followed with extreme care, in order that the object of the section shall not be evaded and the effect of it frittered away. The principal object of the section, as has been pointed out, is the protection of creditors, and if on a sudden or unexpected winding-up a shareholder finds himself liable, who by an understanding with the board of management, it was intended should not be held liable, the decision here cited may afford him a ready means of escaping from the requirements of the Act, to the injury of the creditors whom it was designed to protect. The decision would also seem to indicate that a total want of consideration passing from the shareholder to the company would be covered by registration under the section, but there is nothing in the language of the section to warrant such a construction. In another case it was held that the Court had not the power to get over the difficulty by ordering registration of the contract as of a date antecedent to the issue of the shares.[2]

Sale and Transfer of Stock.

41. No transfer of shares, unless made by sale under execution, or under the decree, order or judgment of some competent court on that behalf, shall be valid for any purpose whatever, save only as exhibiting the rights of the parties thereto towards each other, and as rendering the transferee liable *ad interim* jointly and severally with the transferor to the Company and their creditors, until the entry thereof has been duly made in such book as aforesaid.

[1] Buckley, Joint Stock Cos., 3rd Ed., p. 450; and cases there cited.
[2] Harwich Harbor Co., W. N., 1875, 235.

(*a*) *Right of Transfer.*—The right of transferring one's share and membership, or any portion thereof, to another, at will, is of the essence of an incorporated company as distinguished from an ordinary partnership.[1] But a diversity of opinion seems at one time to have existed concerning the nature and origin of this right. The point of difficulty appears to have been whether the right of transfer was a natural and inherent right, or whether it existed by and in so far as it was conferred by special statute; or, in the absence of statutory provision, by the regulations of the company. The difficulty arose apparently from the anomalous position of the company itself, whose existence, in the eyes of the law, was only a tolerated one, and was due entirely to special legislation. In recognizing, however, its *raison d'etre*, the legislature must be held to have recognized and confirmed the principles upon which it was usually formed, and the rules by which it was usually governed. And one of the most prominent of these was the principle of the transferability of one's part or share, or a portion thereof, to another, "without the consent of directors or shareholders, or anybody." The question may now be said to be settled in accordance with this view. In the leading case on this point,[2] Lord Hatherly considered the freedom of transfer to be a special incident of a Joint Stock Company, and this opinion seems to have been adopted in a large number of cases since reported.[3] But this "freedom of transfer" being open to abuse has, for the protection of the public and the avoidance of fraud, invariably been placed under special restrictions, either by law or by the regulations of the company, or both. The Imperial Act, 1862, leaves the matter entirely in the hands of the company, merely saying,[4] that the shares may be transferred "in manner provided by the regulations of the company." The words "in manner," however, may be

[1] *Vide* Introduction *supra*.

[2] Weston's Case, L. R. 4, Ch. 20.

[3] Healey, Joint Stock Cos., p. 49.

[4] Sec. 22.

presumed to refer to the form of transfer, and to correspond with the language of section 34 of the present Act,[1] which says :

(*b*) "*In such manner only.*"—This appears to be in accordance with most of the other companies' Acts, both English and Canadian, but according to the English[2] "Companies' Clauses Act," it appears that a deed is required in all cases. This, however, it has been held, is unnecessary in the absence of such legal provision. In some English companies, a form of letter peculiar to the company, is used. But whatever it be, a form of some kind or other is recommended to be signed by the parties, particularly by the purchaser, though the bought and sold notes of a broker, or even a verbal contract, if proved,[3] would be sufficient to bind them. And where the articles of the company required such execution, it was held that the directors were justified in refusing to register a transfer which was not in conformity therewith.[4] But where the deed did not specify the particulars, such as the numbers of the shares, dates, etc., it was held that it was valid, at least in so far as to justify the company in registering it.[5]

In the *Princess of Reuss* v. *Bos*,[6] it was held that shares which were not fully paid up cannot be transferred by delivery; but, by the supplementary Act, 1867,[7] it is provided that companies registered under the Act of 1862 (or 1867), if authorized by their original regulations, or by special resolution, are empowered to issue—with respect to any share fully paid up, or to stock—a warrant, under their com-

[1] *Supra* p. 239.

[2] The Supplementary Act of 1867, however, says (sec. 8)—"The instrument of transfer of any share in a Company shall be executed both by the transferer and transferee, etc."

[3] *Vide supra* p. 240.

[4] *In re* Imperial Mercantile Credit Association, Marino's Case, L. R. 2, Ch. 596.

[5] *In re* Barned's Banking Co., *Exp.* Contract Corporation, L. R. 3, Ch. 105.

[6] L. R. 5, H. L. 176.

[7] Sec. 27.

mon seal, stating that the bearer of the warrant is entitled to the shares or stock therein specified; and may provide, by coupons or otherwise, for the payment of the future dividends on the shares or stock included in the warrant. These shares, or stock, may pass by delivery of the share-warrant; and, by a subsequent section,[1] it is provided that the bearer of a share-warrant shall be entitled, subject to the regulations of the company on surrendering such warrant to the company for cancellation, to be registered as a member. In what are called 'scrip-companies,' also, shares appear to pass by delivery of the scrip or certificates.[2] The Canadian Acts, however, make no provisions of this kind, and, as has been seen by the present section, no transfer is complete until it is allowed and registered by the company.

Whatever be the form, it has been held that in the absence of any express agreement or custom to the contrary, the instrument is at the expense and diligence of the transferee.[3] And until this is furnished and *tendered for execution* it is said the purchase cannot, unless the vendor has done something to exonerate him from the tender, maintain an action against the vendor for breach of the contract.[4] But where the auctioneer of the shares, being personally liable to the purchaser, referred him to his principal, the tender was held to have been waived.[5] It is said also, to be the custom of the London Stock Exchange that the transferer should prepare and tender the transfer for execution.[6]

(*c*) *Nature of Contract.*—And as, for the most part, agreements to take or transfer shares in a Joint Stock Company, are made in the stock exchange, and by the instrumentality

[1] Sec. 28, 29.
[2] Digby sale and transfer of shares in Joint Stock Cos., p. 20.
[3] Digby, p. 22; and cases there cited.
[4] *Ibid.*
[5] *Franklyn* v. *Lamond*, 4 C. B. 637.
[6] Digby, p. 23.

of middle-men, called brokers, or jobbers, it will not be out of place to notice here the nature of such transaction and the liability of the parties thereto. To speak of the vendor first, a person having a number of shares in a certain company, which he wishes to dispose of, applies to a broker, who becomes merely his agent for the purpose. But the broker, being merely an agent acting for a certain commission, and not a dealer, and not having the shares himself, or knowing any one who has, applies, in turn, to a jobber. This latter is a general dealer in shares of all kinds, who undertakes either to supply or dispose of the shares, as the case may be) at a given price, by a certain day.[1] The undertaking of such a person was for some time a matter of doubt and dispute as to its legal character, but, by a number of leading English cases, it is now settled that the contract of the jobber is, either to take the shares himself, or furnish the name of a transferee who is responsible and to whom no objection can be raised. Until such a purchaser is found, the jobber is himself personally liable, and, in a number of cases, held that a Court of Equity would enforce the acceptance of the shares, and also indemnity to the transferer, and that the transferer might maintain a direct action at law as for breach of the contract.[2] But as soon as a satisfactory purchaser is furnished, the liability of the jobber ceases, provided that the former carries out his contract. Should he fail to do so, however, the liability of the jobber continues. This was the principal point decided in *Grissel* v. *Bristowe*,[3] (a leading English case) which had the effect of settling a number of questions arising out of the relation of the different parties to the transaction. Where an outsider wishes to buy instead of to sell, and a jobber is applied to, the liability and relations are just the same, though the positions are reversed.

[1] In this country, however, persons occupying the position here described are very little known, the brokers buying and selling for the most part directly with one another.

[2] Thring, Joint Stock Cos., 3rd Ed., p. 61, 62; and cases there cited.

[3] L. R. 4, C. P. 55.

(*d*) *Repudiation of Contract.*—It sometimes happens, however, that a person is led into purchasing shares either by misrepresentation on the part of the seller, or, as is more frequently the case, on the part of the company. In such case it would only appear fair and equitable that, as in other cases of contract induced by fraud or deceit, he should be afforded some means of relief. In the former case, where the misrepresentation was by the individual vendor or his agent, it has been held in a number of cases that he cannot relieve himself from his shares, *quoad* the company, but that his proper remedy was a direct action against the vendor to recover damages for the loss sustained,[1] or to take back the shares.[2]

But in the United States, held that a contract to buy shares in a corporation, induced by fraudulent misrepresentation, is not necessarily void, but it is voidable at the election of the purchaser.[3] And where the rights of creditors are involved, it must be repudiated promptly on discovering the fraud, or it will be held binding as to them.[4] If the action, however, is of damages against the vendor, the proper measure of damages is the difference between the value of the stock as the condition of the company really is, and its value as the purchaser was fraudulently induced to believe it was; and if the real pecuniary condition of the company is shown, from which it appears that the stock was worthless, the market price is entitled to no weight upon a question of value.[5]

But where the misrepresentation is that of the directors, and the purchase is from the company,[6] it was for a long time doubted whether a purchaser could repudiate his contract. It was said that directors and

[1] Thring, 3rd Ed., p. 63; and cases there cited.
[2] *Stambank* v. *Fernley*, 9 Sim. 556.
[3] *Upton* v. *Englehart*, 3 Dill. 476, Iowa, 1874; Abb. Dig., Vol. II.
[4] *Farrar* v. *Walker*, 3 Dill. 506, Iowa, 1875; Abb. Dig., Vol. II.
[5] *Hubbell* v. *Meigs*, 50 N. Y. 480, App. 1872; Abb. Dig., Vol. II.
[6] *Vide* allotment *supra*, p. 251.

managers being agents of the company, that the company could not be responsible for fraud committed by them. And though it was held that directors are not agents of a company to commit a fraud, still, if the company have benefitted by the transaction, it will be bound. For where a corporation takes advantage of the fraud of its agents, it cannot afterwards repudiate the agency, and say that the act which has been done by the agent is not an act for which it is liable.[1] Reports and accounts, therefore, made or rendered by directors in the course of their duty concerning the affairs of the company, though made and issued to the shareholders only, are considered the representations of the company, *not only to the shareholders, but to the public*, if they are published and circulated by authority of the directors or a general meeting.[2] And in the *National Exchange Bank of Glasgow* v. *Drew*,[3] Lord Cranworth said, "What is the consequence of a company receiving a report and publishing it to the world? I confess that, in my opinion, from the nature of things and from the exigencies of society, that it must be taken, as between the company and third persons, to be a representation by the company." And Lord St. Leonards expressed the same opinion in the same case. He said, "I have certainly come to this conclusion, that if representations are made by a company fraudulently for the purpose of enhancing the value of their stock, and they thereby induce a third person to purchase stock, those representations so made to them do bind the company."[4]

The result of the decisions *in rebus, The Western Bank of Scotland* v. *Addie*,[5] and *Kisch* v. *Central Railway Co., of*

[1] *Swift* v. *Jewsbury*, L. R. 9, Q. B. 301, 312; and in *Peebles* v. *Patapsco Guano Co.*, 77 N. C. 233, the judgment was that a corporation is liable in an action of *tort* for the fraud and deceit of its agent in making the sale. *Vide* 1 Leg. News, Mon., p. 262.

[2] Shelford Joint Stock Cos., p. 56.

[3] 2 Macq. 103.

[4] *Vide* Shelford, p. 57; where these opinions are more fully related.

[5] L. R. 1 H. L. Sec. 145.

Venezuala,[1] by the House of Lords, was, that a company cannot retain any benefit they have gained through the fraud of their agents; and, "therefore, a person who has been induced to purchase shares by fraudulent misrepresentations or fraudulent concealment on the part of the company, through its agents, is entitled to be relieved from his shares *as against the company*, unless he is precluded from relief by lapse of time, or the mode in which he has dealt with the shares."[2]

Most of these cases and rulings apply more particularly to contracts with the company, but they have a limited application to the case of a sale and transfer from one individual to another. Of course where the shares are fully paid up it matters little, if any, to the company, who is the holder; and, consequently, though the purchase by the transferee may have been made on the strength of false reports and statements issued by the directors, the company cannot be said, in such case, to have benefitted by it. But can it be said that the company are wholly irresponsible in the premises? It is clear that unless the vendors were aware of the misrepresentation, and repeated it in order to induce a purchase, that they could not be held liable; and unless the company, or the directors, personally, were liable, the purchaser would be without remedy. But where a purchaser has unmistakably suffered loss through the fraud or misrepresentation of the directors acting in their capacity as such, it is clear that either the directors themselves, or the company for which they acted, are liable. It has already been seen[3] that directors stand in a twofold relation to the company, viz., that of trustees and that of agents. They are trustees of the property and powers of the company; they are agents in their ministerial acts for and on behalf of the company. Any misrepresentation

[1] De. G. J. & S. 122, L. R. 2, H. L. 99.

[2] Thring, Joint Stock Cos., 3rd Ed., p. 65. Such relief must be applied for also before a winding up order is made, or the application will be too late, as in the case of *Tennent* v. *The City of Glasgow*, (referred to *post*.)

[3] *Vide supra*, p. 201.

they may make they make as part of such ministerial acts, and, therefore, in their capacity as agents. The law of principal and agent, then, governs, and no other. And by that law the principal would be bound just so far as it had authorized or approved of the acts in question. If the statements alleged to be false, therefore had been adopted and approved by the company at a regular meeting, the company would be liable.[1] But if a third person has purchased shares on the strength of statements not so adopted or approved of, or, in other words, statements made and circulated by the directors on their personal responsibility, he must look to them only to be indemnified. The result is the same as if a director had induced a person to purchase stock from the company or from a third person by private verbal statements which turned out to be false.[2] In *McGowan* v. *Dyer*[3] it was held that a company is not responsible for acts done by its managing director when he is acting in his private capacity, and not acting for the company, or in pursuance of any authority given by the company. And in the *Western Bank of Scotland* v. *Addie*,[4] held that a person defrauded by the directors, whose only remedy is an action for fraud, must bring it against the directors personally.[5] And, in a number of cases, it was held that the directors were liable severally as well as jointly, and that the plaintiff would be entitled to relief against any of them without making the others parties to the suit.[6]

[1] But in a recent English Case said that a person induced by the fraud of the agents of a Company to become a partner can bring no action for damages against the Company while he remains in it; his only remedy is *restitutio in integrum*, and if that becomes impossible by the winding up of the Company, or by any other means his action for damages cannot be maintained. *Houldsworth* v. *City of Glasgow Bank*, L. R. 5 App. cases 317.

[2] If this statement of the law be correct the necessity of appointing auditors of the most undoubted reliability to examine into the correctness of reports of the directors becomes apparent, as it is in most cases impossible for each shareholder to ascertain for himself the correctness of such reports.

[3] L. R. 8, Q. B. 141.

[4] L. R. 1 H. L. See 145.

[5] With regard to damages for *neglect* on the part of the directors. *Vide infra.*

[6] Buckley, Joint Stock Cos., 3rd Ed., p. 103; and see cases there cited.

In *Craig* v. *Gregg*,[1] however, it was held that one stock-holder in a corporation cannot maintain an action at law against the directors for damages suffered by him in common with other stock-holders, by their negligence. And the action is one personal to the directors as for a tort; and, except in so far as his estate is proved to have derived benefit from it, no action will lie against his executors for the same cause.[2] And the action, if brought at all, should be brought without delay, on discovery of the fraud, without waiting to see its effect on the stock; though held in the House of Lords, on appeal, that the only absolute bar to relief was that fixed by the Statute of Limitations.[3]

As to what constitutes misrepresentation sufficient to entitle to relief, it is laid down that "whether as against an individual vendor or a company, the misrepresentation must be material, with reference to the contract; that is such as the purchaser would rely on in entering into the contract; and, also, it must be clearly shown that as a matter of fact the purchaser did rely thereon."[4] And it would appear that any director, knowing of the misrepresentation or false statements in the reports, would be equally liable, though he did not approve of them, with those who did. But not if he was absent and did not really know of the statements prior to their publication. This was the effect in the decision in *Weir* v. *Larnett*,[5] and a number of other cases, in which it was decided that a director can be held liable only for his own personal fraud, or for the fraud of his co-directors or of other agents of the company which he has either expressly authorized or has connived at. A director, therefore, knowing of the misrepresentation, could only effectually protect himself by following the procedure indicated in section 42, concerning transfers.

[1] 83 Penn., *St.* 19.

[2] Buckley, 3rd Ed., p. 103; and Peek & Gurney, L. R. 6, H. L. 377, 384, 402.

[3] *Ibid.*

[4] Thring, 3rd Ed., p. 66; and cases there cited.

[5] 3 Ex. D. 32; and see Buckley, 3rd Ed., p. 102.

(*e*) "*Until the entry thereof, etc.*"—As pointed out above,[1] these words seem to dispose of the question whether shares in Joint Stock Companies may be transferred by mere delivery. For not only have the directors the power to refuse to sanction a transfer, but, by the next following section,[2] are themselves made liable for any loss which may accrue to the creditors of the company by consenting to an improper transfer. But though a transfer unregistered is without effect as a change of membership, or of liability towards the creditors, it may still serve to "exhibit the rights of the parties thereto towards each other." And, under the English Act, where a person agreed to sell his shares to another, and the directors refused to register, it was held, that his remedy was in damages, and not for the specific performance.[3] But under the present section, as the proposed transferee must be held to know of the restriction—being part of a public statute—no such action would lie. And the result would, doubtless, be the same as against the transferee for non-acceptance. For the vendor must be held to have entered upon a bargain and sale of his shares with full knowledge that the person to whom he was selling could not be a *bona fide* holder of shares until he was accepted by the company, and that, therefore, such acceptance was a condition precedent to the completion of the contract. But these remarks must be taken to apply to a transfer of shares not fully paid up, or on which the company possesses a lien under sections 44 and 45. For where the company could not show proper grounds for refusing to register, they could be held liable in damages for persisting in refusal.[4] Or may be ordered to register, as in the case of *Moffat* v. *Farquahar*,[5] where the directors have power to approve or disapprove, and the plaintiff having a large number of shares transferred, some by sale out and out, and some in trust for himself, in order

[1] *Vide supra.*
[2] *Vide post.*
[3] *Poole* v. *Middleton*, 29 Beav. 646.
[4] *Vide Webster* v. *The Grand Trunk Ry. Co.*, 3 L. C. Jur. 148.
[5] 7 Ch. D. 591.

to secure more votes. The directors, knowing the object, refused to approve and consent to the transfer without alleging anything against the transferees. Held, that they could not refuse on account of the object of the transfer, and without there being some personal objection to the transferees. But in the United States, held that where stock has been colorably transferred, for the purpose of fraudulently controlling a corporate election, an injunction to restrain voting upon such stock may be granted.[1]

(*f*) *What is transfer.*—The transmission of shares to the trustee (or assignee) of a bankrupt, is not a transfer within the meaning of Article 10, Table A, of the Companies' Act, 1862; and such trustee is consequently entitled to be registered as a member in respect of the shares held by the bankrupt, although the bankrupt be indebted to the company.[2]

42. No transfer of shares whereof the whole amount has not been paid in shall be made without the consent of the Directors, and whenever any transfer of shares not fully paid in has been made with such consent, to a person being apparently of insufficient means to fully pay up such shares, the Directors, jointly and severally, shall be liable to the creditors of the Company, in the same manner and to the same extent as the transferring shareholder, but for such transfer, would have been; but if any Director present when any such transfer is allowed, do forthwith, or if any Director then absent, do within twenty-four hours after he shall have become aware thereof, and able so to do, enter on the minute book of the Board of Directors his protest against the same, and do within eight days thereafter publish such protest in at least one newspaper published at, or as near as may be possible to, the office or chief place of business of the Company, such Director may thereby, and not otherwise, exonerate himself from such liability.

(*g*) *No transfer of shares, etc.*—In considering a question of transfer, it will be always important to notice whether the contract refers to paid up shares (on which no liability remains) or to shares respecting which the holder is still liable in whole or in part. For while the transfer of paid up shares is comparatively unfettered, it is not only the

[1] *Webb* v. *Ridgely*, 38 Md. 364 App., 1873; Abb. Dig., Vol. II.
[2] *Re* The Bentham Mills Spinning Co., 28 W. R. 26.

right, but the duty of the directors to refuse registration of a transfer of unpaid shares, where the proposed transferee is a person of no apparent means, and the transfer is presumably made for the purpose of avoiding liability. For this purpose then every application to register a transfer of shares should be brought before a regular meeting of the Board of Directors, and granted or refused by the majority in the ordinary manner, on evidence of the fitness of the person proposed as transferee to be substituted in the place of the holder for the shares mentioned. If the Board is divided in opinion, the minority may save themselves from liability in the manner laid down in the section.

It is evident moreover that the majority, or whoever they are, who undertake the responsibility of consenting to the transfer, may be deceived by the misrepresentation of the parties asking for the registration; and, with the best intention in the world, may order the registration of a transfer to a totally irresponsible person. What would be the result in such case? The practice of the Courts would have to be looked to for an answer. For although no such liability is attached to the directors under the Imperial Statutes, the question has frequently arisen as against the transferer. And the result of the decisions under those Statutes is, that where the consent of the directors has been obtained by misrepresentation, and the facts were such, that had they known them they would have refused the transfer, the transfer will be set aside and the transferer still held liable. And *in re* the European Arbitration, (a leading case) it was held that if the transferer, without having made any misrepresentation, knew in fact that his proposed transferee was not a proper and solvent person, then the transfer would be set aside and the transferer rendered liable.[1] In this case Lord Westbury said very forcibly:—"I do not care a rush whether the directors inquired or not, or whether there was misrepresentation or not; but if I find

[1] Buckley, 3rd Ed., p. 20, 26; and Healey, p. 54.

the man who desires to dispose of his shares in favor of A. B. knows very well in his mind, at that time that A. B. was an insolvent man, or a dishonest man, or an improper man, to introduce into the partnership, I shall hold that the personal knowledge on the part of the individual disposing of his shares, forbade him to do what he desired to do, and that his persisting in doing it relying on the ignorance of the directors, and concealing what he knew, was a fraud upon the directors."[1]

Applying these principles to the above section, it cannot be doubted that where the directors have used due diligence to discover the worthiness of the proposed transferee, and have been deceived by the parties they will have done all that the section requires of them; but the transfer will be held void, *i. e.*, voidable, at the instance of any competent party. And not only that, but under the authority of the previous section up to the time such a transfer is set aside, the parties thereto will be held *jointly and severally* liable toward the creditors for the amount unpaid on the shares. But as the object of the above section manifestly is to make it a part of the duty of the directors to inquire as to the standing of the proposed transferee, the above decision will not apply so far as to absolve the directors from liability under any plea of concealment where they have neglected to use diligence to that end. As to what would in each case constitute diligence so as to absolve the directors from liability under the section would be a matter for the Court to decide. But what constitutes misdescription or misrepresentation, so as to avoid the transfer, has been the subject of a number of decisions. Thus, where the transferee was described as "a gentleman," but proved to be a person of little or no means, and who lived in a house worth only £3 a year, it was held immaterial.[2] And so also where the transferee being described as "a gentleman"

[1] Healey, *Ibid*; Williams' Case, L. T. 125, 126. And in Murgatroyd's Case, His Lordship went further and called upon the transferer to make an affidavit, that he knew that the transferees were men of substance, etc. But this is not regarded with favour.

[2] Bishop's Case, L. R. 7, Ch. 296.

proved to be a journeyman butcher, and the son-in-law of the transferer. And this, notwithstanding that the transfer was made for a merely nominal consideration,[1] and the directors had the power to refuse improper transfers if they knew them to be so. But where a transfer was made to a person described as "of Cadogan terrace, gentleman," in consideration of £1,326, expressed to be paid, and the directors registered the transfer; but it subsequently transpired that the transferee was employed in a warehouse at a salary of less than £100 a year, and the consideration was paid only by a promissory note; held that the misdescription of the transferee and misstatement of the consideration were fatal, and that the transferor must be put upon the list.[2] And in the United States, held that a transfer to an insolvent will not relieve the original holder from his liability.[3] But in Upper Canada, held that the insolvency of the assignee was no objection to the transfer, the only condition for a valid transfer being the payment of all calls.[4]

(*h*) *Valid transfer.*—But whether the directors have exercised their power or not, one essential condition of a valid transfer is that it be made without reservation in favor of the transferor. If it can be shown to be only a colourable or fictitious transfer made for the purpose of escaping liability, but reserving a right in the person transferring, it will be held to be invalid. There must be an absolute divestment of one person and investment of another to constitute a valid transfer. And in some of the cases it has been held sufficient that the circumstances show a presumption to this effect without direct proof. Thus in Lund's case,[5] the transfer was to a servant and the consideration nominal. The transferer and transferee,

[1] Master's Case, L. R. 7, Ch. 292.

[2] Snow's Case, 19 W. R. 1057; and *Vide* Buckley, 3rd Ed., p. 25.

[3] *Provident Saving Ins. Co.* v. *Jackson, etc.*, Rink. 52, Mo. 557, Su. Ct., 1873.

[4] *Moore, et al*, v. *McLaren*, 11 C. P. 534; Robinson's Dig., 755.

[5] 27 Beav. 465.

however, both agreed that the transfer was out-and-out; but, nevertheless, held to come under this rule and to be void.[1] And where a witness who was a stockholder in, and also president of a banking institution, stated in an action brought by the bank that he had released his stock for a nominal consideration to the directors, but had no doubt it would be returned to him; it was held that the transfer was merely colorable and his testimony was not admissible.[2]

(*i*) *Refusal to register.*—But where a discretionary power is given to directors, as by the above section, to refuse registration of a transfer, the power, it has been held, must be exercised reasonably, and not made a means of indulging improper or malicious motives.[3]

And in the United States, held that a transfer cannot be refused because, in the judgment of the transfer agents, the motives and purposes of the parties are improper; or because the transfer may effect injuriously the interests of the company.[4] And in an action of damages for refusing a transfer, the company cannot sustain its refusal by proof that after the assignment of the shares was made, but before his demand for a transfer, the company was served with notice of attachment of the shares as the property of the assignor.[5] And where in Upper Canada, certain stock in the British America Assurance Company was transferred by it, and the transfer entered in the stock ledger so that the shares stood in the name of the transferee, but, before any receptance had been signed, the shares were seized under an execution against the transferor, it was held that the transfer was complete and the seizure illegal.[6] And

[1] This, however, is supposed to go beyond the majority of the cases. *Vide* Buckley, Joint Stock Cos., 3rd Ed., p. 22.

Bank of Michigan v. *Gray*, 1 Q. B. 422; Robinson's Dig. 757.

[3] *Robinson* v. *Chartered Bank*, 1 Eq. 32; and *Vide* Healey, Joint Stock Cos., p. 58.

[4] *State* v. *McIver*, 2 S. C. 25, Su. Ct., 1870; Abb. Dig., Vol. II.

[5] *Comean* v. *Guild Farm Oil Co.*, 3 Daly 218, C. P., 1870.

[6] *Woodrup* v. *Harris*, 11 Q. B. 490; Robinson's Dig. 757.

this is on the principal held in a number of leading cases in the United States, that a formal transfer on the books is not necessary to perfect the buyer's title.[1] And a demand for the transfer of stock on the books of a corporation, and a refusal by the officers upon whom the demand is made, to comply therewith, with a statement of a specific reason for such refusal, is a waiver of all other objections to the transfer.[2]

But where no sufficient reason for refusing exists, it would appear that the transferee has a right of action either for specific performance, or in damages. The latter, however, is the more usual. Indeed, it has been held that a demand for specific performance would not lie.[3] And the reason is, as given by Story,[4] that ordinarily the contract is capable of such an exact compensation. "But cases," he says, "of a peculiar stock may easily be supposed where Courts of Equity might still feel themselves bound to decree a specific performance, upon the ground that from its nature it has a peculiar value, and is incapable of compensation by damages." This was held to be the case in *Cushman* v. *Thayer Manufacturing Company*, a recent case in the United States.[5] In that case, the original certificate of stock was issued to Peter B. Cushman, plaintiff's husband. By its terms, it was transferrable only on the books of the company upon the surrender of the certificate. On January 26, 1875, Cushman issued in blank the usual printed assignment and power of Attorney upon the back of the certificate, to which one Beals was a witness, and delivered the same to plaintiff, who presented it to the defendant, offered to surrender the certificate, and demanded a transfer of the same to her upon the company's books, and that a certificate be issued to her. This, defendant re-

[1] Abb. Dig., Vol. II. *The People* v. *Elmore*, Su. Ct., Cal., 229; Withrow's Corporation Cases. *Carroll* v. *Mullanphy Savings Bank*, Ct. of App., Miss., 1880.

[2] *Bond* v. *Mount Hope Iron Co*, Su. Ct., Mass., 618.

[3] Angell & Ames, corporations, 381, 710.

[4] Eq. Jur. ,117.

[5] 76 N. Y. 365.

fused. Defendant set up as a defence, and proved that after the assigment to plaintiff, Cushman executed an assignment of the stock to said Beals for a valuable consideration, and caused the same to be transferred to Beals upon defendant's books. Beals was one of defendant's officers. In rendering judgment, Miller, J., said, "The right of the plaintiff to maintain this action depends upon the question whether an equitable action will lie to compel a transfer of stock by a corporation to the owner of the same, or whether the recourse of the plaintiff is by an action at law or for damages. The latter action is frequently of no avail, and does not always afford complete and full redress. It is easy to see that a party may have become the owner or purchaser of stock in a corporation which he desires to hold as a permanent investment; which may be at the time, of but little value, in fact without any market value whatever, and its real worth may consist in the prospective rise which the owner has reason to anticipate will follow from facts within his knowledge. To say that the holder shall not be entitled to the stock because the corporation, without any just reason, refuses to transfer it; and that he shall be left to pursue the remedy of an action for damages, in which he can recover a nominal amount, would establish a rule which must work great injustice in many cases, and confer a power on corporate bodies which has no sanction in the law. A Court of Equity will enforce a specific performance on a contract for the sale of real estate, and compel the execution of a deed by the vendor to the vendee, although an action at law may be brought to recover damages for breach of the contract. Such a case bears a striking analogy to the one now presented, and the same principle is manifestly applicable where the remedy at law is inadequate to furnish the proper relief."

They are not, however, bound to give their reasons for refusal to register.[1] To entitle a Court to interfere, evi-

[1] Ex. p. Penn., *seq.*, L. R. 8, Ch. 446. But in an Upper Canada Case, held that they could not refuse without assigning a sufficient reason therefor. Robinson's Dig. 759.

dence must be made that the directors are acting without a proper motive; and in the absence of such evidence, it has been said, the Court has no jurisdiction. They would be sitting as a Court of Appeal from the decision of the directors.[1]

Nor are the directors obliged to give notice of their refusal to register a transfer. It is for the transferer to assure himself that the transfer has been allowed and registered, if he wishes to escape liability.[2] And for the same reason, if the transfer is not refused, he should see that it is registered without delay. Directors, of course, may deal with their shares in the same manner as other shareholders, except as restricted by their qualification. But where a director availed himself of his position to get rid of his liability by obtaining a postponement of a call which ought to have been made, he was held to be a contributory.[3]

(*j*) *Formalities.*—Provisions in charter and by-laws prescribing formal requisites to a transfer of shares are for the benefit of the company, and may be waived. If transfers are permitted by the company to be made in some different manner from that directed, the company cannot afterwards repudiate the right or status of the transferees as stockholders, on the ground that the prescribed formalities were not observed.[4] And a *bona fide* assignee of bank stock, with valid transfer thereof on the books of the bank, who takes his assignment without notice of a previous transfer not entered on the transfer book, has a prior and better right to such stock than the previous assignee.[5] But a corporation does not, in the absence of fraud or collusion, become the guarantee of a vendor's title to shares of its capital stock, by permitting it to be transferred on the books, in the manner prescribed by its charter.[6]

[1] Healey, Joint Stock Cos., p. 58.
[2] *Ibid*, p. 62; and cases there cited.
[3] Thring, Joint Stock Cos., p. 59; and cases there cited.
[4] Abb. Dig., Vol. II., 646.
[5] *Cady* v. *Potter*, 55 Barb. 463; Su. Ct., 1869.
[6] *The Central R. R., etc., Banking Co.* v. *Ward, et al*, Su. Ct., Ga., 299; Withrow's Corporation Cases.

(*k*) *Transfer obtained by fraud.*—P. fraudulently obtained possession of a certificate of shares in the defendant company held by C., and forged C.'s signature to a transfer of the shares to W. The company, in ignorance of the fraud, registered the transfer and issued a new certificate to W., who had bought the shares in ignorance of the fraud. Held, that the company having issued the certificate to W. without any want of care, were not estopped from contesting its validity, and that C. was entitled to the shares.[1]

(*l*) *Transfer after insolvency.*—A registration of the transfer may be refused also on the ground that a winding up order has taken place. On the thirtieth of September, 1878, the appellant, through a broker, sold some shares in the City of Glasgow Bank on the Glasgow Stock Exchange. The sale was entered in the transaction books of the respective brokers, and each entry specified the name of the broker for the other party, and was initialed by him, the 16th of October being stated as the selling day. At the time of the sale the appellant's name was verbally mentioned to the purchaser's broker, who, on the following day, informed the appellant's broker that the shares had been bought by the directors of the bank. On the second of October the bank stopped payment, and on the fifth the directors summoned a meeting of the shareholders to consider a resolution for a voluntary winding up. On the sixteenth of October the appellant tendered a deed of transfer to the secretary of the bank, but the directors refused to execute the deed or to register the transfer. At the meeting of shareholders held on the 22nd of October, a voluntary winding up was agreed upon. Held that the appellant was liable as a contributory in the winding up of the company, and that the directors had been guilty of no default or unnecessary delay within Section 35 of the Companies Act, 1862, in refusing to execute the transfer of shares.[2] In a similar case in which the same principle was

[1] *Waterhouse* v. *L. & S. W. Railway Co.*, 41 L. T. 553.
[2] *Nelson Mitchell* v. *City of Glasgow Bank*, 27 W. L. 875.

held, the appellant was a trustee and executor of A, and was registered in the books of the City of Glasgow Bank as holder of certain stock jointly with his co-trustees. On the 16th October, 1878, he resigned his trusteeship by a minute entered in the sederunt book of the trust, and signed by himself and his co-trustees. The bank had stopped payment on the 2nd of October, and the directors had summoned a meeting of the shareholders for the 22nd inst., for the purpose of considering a resolution for a voluntary winding up. On the 17th October the appellant delivered a certified copy of his minute of resignation to the secretary of the bank, and requested that his name might be removed from the register of shareholders; but the directors refused to remove his name, and at the meeting of shareholders held on the 22nd October, a voluntary winding up was agreed upon. Held that the appellant was liable as a contributory in the winding up of the company.[1] In both of these cases the House of Lords affirmed the principle in the most unqualified manner that after the stoppage of a company on account of its insolvency, and the issue by the directors of a notice convening a meeting of the shareholders for the purpose of considering a resolution for a voluntary winding up, the directors of the company are justified in suspending the registration of all transfers of shares.

44. No share shall be transferable until all previous calls thereon have been fully paid in.

(*m*) *Transferer must have paid calls.*—This section makes absolute what under the English Acts is included in the discretionary power of the directors. By this section every transfer made of shares in a company formed under the Act, while calls thereon remain unpaid, is absolutely without effect. The effect of the present section must be to avoid a good deal of doubt and difficulty as to the validity of such a transfer, and also to avoid temptation on the part of the directors to register transfers in order to avoid payment of calls which have been made. But as doubt may

[1] *Alex. Mitchell* v. *City of Glasgow Bank*, 27 W. R. 873.

arise under the section as to when a call is made, or is payable, it may be of use to refer to some of the decisions which have been rendered on this point. In Dawe's case,[1] held that a call is owing from the day on which it is made, although it be payable on a subsequent day. And by Art. 5, of schedule 1 attached to Act of 1862,[2] it is said, "A call shall be deemed to have been made from the time when the resolution of the directors authorizing such call, was passed." But in *Watson* v. *Fales*,[3] it was said that, "in the absence of a definite provision as to the date at which a call is to be considered as made, the practice of the company will be regarded in ascertaining the date. In calculating interest on unpaid calls, however, it is provided by section 53. of the present Act,[4] as above, that a call shall be deemed to have been made from the time of the passing of the resolution authorizing it.

An interesting case in point is that of *Farrell* v. *Ritchie*, in the Superior Court, Montreal.[5] In that case the plaintiff bought, through brokers, (the defendants) shares in an insurance company, for which he paid cash on the 13th of February. The stock, however, was not transferred for the reason that a call had been ordered the day previous and notified the same day (the 13th), payable on the 15th May following. The plaintiff was duly apprised, and asked, as the call was not payable till the middle of May, that they carry it for him until then. This they refused to do, and the stock getting lower in the market, they sold it, and the plaintiff sued to get back his money. Held, that as the plaintiff was liable for the call, that the defendants were not in default in what they did, and plaintiff could not recover.

And another was that of *Provincial Insurance Co. of Canada* v. *Shaw*,[6] in which to an action brought for two

[1] *In re* China Steamship Co., 38 L. J. 512.
[2] *Vide* Buckley, 3rd Ed., p. 366.
[3] *Ibid* and 23 Beav. 294.
[4] *Vide post.*
[5] 1 Leg. News, Mon., 76.
[6] 19 Q. B. U. C. 533; Robinson's Dig. 758.

calls, one made on the 9th of December, 1858, and the other on the 17th of June, 1859. defendant paid into Court the first call, and pleaded never indebted to the second. At the trial he admitted having held the stock, but alleged that on the 5th of February, 1858, he had transferred it to M; and he accounted for having paid the first call sued for, by stating that he had given a bond to the plaintiffs to pay that call, and therefore did so notwithstanding the transfer. To prove the transfer, the plaintiff's transfer book was produced, in which it was entered, the transfer and acceptance being signed by D, who was then the plaintiff's manager, as agent for both parties; and their stock book was also produced, in which the stock appeared in M's name. The powers of Attorney were not produced, but the plaintiff's secretary, who produced the books, said he believed they existed, and that all the papers were in the hands of the plaintiff's attorney. Held that the transfer was sufficiently proved for the purposes of the action, being signed by the plaintiff's officer as agent for both parties, and recognized in their books: that it was unnecessary to produce the bond given by defendant, and that defendant was not estopped by having paid the call made in December, 1858, from denying that he had transferred the stock before the call was made.

45. The Directors may decline to register any transfer of shares belonging to any member who is indebted to the Company.

(*n*) *And must not be indebted.*—Two things may be noted concerning this section. First, that the power given to the directors applies to all shares, whether paid up or not, instead of as by the previous sections to shares on which something remains to be paid. Second, that the power is permissive, and not directory, as in the previous sections. The section appears to be a copy of the 10th Art. of the Schedule before alluded to, and is doubtless intended to cover questions which have arisen as to the right of a company to a lien on its shares for debts due it by the shareholders. The effect of the section is to create a lien for

any debts due to the company, which it can enforce or not as it deems expedient. It has been discussed, however, whether the debt must be actually due and payable at the time of the application for registration. "Thus a banking company having under its articles a lien upon the shares of any shareholder for all moneys due the company from him, etc.," held bills of a shareholder for a debt due the bank. Held that the amount of the bills was, before they arrived at maturity, 'moneys due to the company,' for which it had a lien on the shares.[1] But where the articles provided that the company should have a lien for money 'due,' and that the company might decline to register a transfer by a member who was indebted, held that the word 'due,' by virtue of the context, meant 'due and payable,' and that 'indebted' meant 'indebted in money due,' but not yet payable, and that therefore the company could not refuse to register a transfer on the ground that they were indorsers and holders of a current acceptance by the transferer."[2] Following these decisions then and comparing them with the language of the section, a company could not refuse to register a transfer on the ground of indebtedness, not yet *due and payable*. Nor does the article apply to a transmission of shares by devolution of law. Thus a shareholder in a company subject to the corresponding clause in table (A) of the English Act, became bankrupt and it was held, that the trustee in bankruptcy was entitled to be registered as the owner of the shares held by the bankrupt, notwithstanding that the bankrupt was indebted to the company.[3]

Under the English system, as has been pointed out, the restrictions to be imposed on the freedom of transfer, are left entirely in the hands of the directors, which they are supposed to exercise reasonably and with a sole regard to the welfare of the company, and the protection of its credi-

[1] London, Birmingham, etc., Bank, 34 Beav. 332; and Buckley, 3rd Ed., p. 372.

[2] *Ibid* and Stockton Iron Co., 2 Ch. D. 101.

[3] *In re* Bentham Mill Spinning Co., 48 Law Jur. Rep. 671.

tors. But on the principle *expressio unius, exclusio alterius*, there can be no doubt that the powers of the directors of a company formed under this Act, are confined in this respect to those given to them by these sections. In other words they could impose no other restrictions, or refuse to register a transfer of shares on no other grounds, than those there laid down. The object of the sections is clearly to limit the authority of the directors in this respect as compared with the English system.

(*o*) *Transfer to Infant.*—A transfer of shares, however, may be set aside for the same causes as other contracts, viz: the legal incapacity to contract. Thus, a transfer to an infant may be repudiated by the infant at any time; provided, he does nothing after attaining his majority from which an acceptance of them will be implied. And so also a company for the same reason may refuse to register a transfer to an infant; and if it do register through mistake, the name of the transferer may be replaced on the list of contributories. But where to an action for calls, the defendant pleaded that he was an infant at the time he contracted to take the shares, the plea was held bad for want of an averment that he had repudiated the shares within a reasonable time after coming of age.[1]

And so also a plea, that the defendant was an infant *at the time calls were made*, was held bad.[2] But as to what constitutes acquiescence after coming of age, *held* that where an infant having attained his majority allowed his name to be used, together with other shareholders, in an attempt to be struck off the list of contributories on the ground of misrepresentation, this did not amount to acquiescence.[3]

(*p*) *To married women, etc.*—And so also as regards married women in community with their husband, lunatics, and others incapacitated from contracting in their own

[1] Shelford, Joint Stock Cos., p. 125; and cases there cited.
[2] *Ibid.*
[3] *Ibid, p.* 126.

name. But there is nothing to prevent such persons from holding in the name of trustees, such as executors, administrators, tutors, curators, guardians, etc.; and sections 49 and 50 of the present Act make provision for the security of such persons and their rights as members of the company.

4—Transmission of Stock.

43. Whenever the interest in any share or shares of the capital stock of the Company shall be transmitted by the death of any shareholder or otherwise, or whenever the ownership of or legal right of possession in any such share or shares shall change by any lawful means other than by transfer, according to the provisions of this Act, and the Directors or Company shall entertain reasonable doubts as to the legality of any claim to and upon such share or shares of stock, then, and in such case, it shall be lawful for the Company to make and file in one of the Superior Courts of law or equity, in the Province in which the head office of the Company is situated, a declaration and petition in writing, addressed to the Justices of the Court, setting forth the facts and the number of shares previously belonging to the party in whose name such shares stand in the books of the Company; and praying for an order or judgment adjudicating and awarding the said shares to the party or parties legally entitled to the same; and by which order or judgment the Company shall be guided and held fully harmless and indemnified and released from all and every other claim for the said shares or arising therefrom: Provided always, that notice of such petition shall be given to the party claiming such share or shares, or to the attorney of such party duly authorized for the purpose, who shall, upon the filing of such petition, establish his right to the several shares referred to in such petition; and the delays to plead and all other proceedings in such cases shall be the same as those observed in analogous cases before the said Superior Courts: Provided also that the costs and expenses of procuring such order and adjudication shall be paid by the party or parties to whom the said shares shall be declared lawfully to belong, and such shares shall not be transferred until such costs and expenses be paid, saving the recourse of such party against any party contesting his right.

(*a*) *By death of member, etc.*—A provision similar to this is now found in most of the Company Acts or regulations. The object, of course, is to avoid liability on the part of the company, upon the decree of a member, as it might otherwise incur loss by paying to the wrong person, or transferring the shares at the request of one having no right in them. The object, in short, is to settle the succession and

Vide post.

right of property in the shares so as to free the company from liability in respect of such shares. The system under the English Statutes is somewhat different. The Acts themselves, indeed, make no such provision, but the 13th article of Table A, section 1, attached to the Act, says: That any person becoming entitled to a share in consequence of the death, bankruptcy, or insolvency of any member, or in consequence of the marriage of any female member, may be registered as a member upon such evidence being produced as may from time to time be required by the company. As a matter of fact, however, the rules of the company usually provide that the legal personal representatives of deceased shareholders shall be the only persons recognized by the company as having a title to the shares; and often, also, that any person becoming entitled to shares in consequence of death, bankruptcy, marriage, or, in fact any other way than by transfer, may either become a member himself, or nominate someone else to be owner of the shares.[1] On the decease of a member in any case, and until some other eligible person is substituted on the books of the company, the estate of the deceased is liable in the same way in respect of the shares as the shareholder would have been had he continued to live. However, to escape the disadvantage under which the company is thus placed in having for holders of its shares merely representative members, whose liability is limited by the amount of the assets of their testator, provisions have been commonly introduced into deeds of settlement putting upon executors a pressure either to transfer their testator's shares, or to become in their own persons proprietors in respect of them, by attaching the penalty of forfeiture to a neglect to do either one or the other within a limited time.[2] But the mere fact of the executors receiving dividends will not amount to an acceptance of the shares by them,[3] and it makes no difference that one of the executors is a beneficial

[1] Healy, Joint Stock Cos., p. 75.

[2] Buckley, 3rd Ed., p. 373.

Thring, 3rd Ed., p. 85, and cases there cited.

residuary legatee and receives the shares on his own account. Nor that he assents to a bequest of the shares, unless the company have accepted the legatee as a shareholder.[1] And as between the persons beneficially interested in the shareholder's estate, specific legatees of shares must pay calls made after; while the residuary estate must pay calls made before the testator's death.[2] But by the 99th section of the Act, 1862, it is provided, that where the sonal representative of a deceased contributory is placed on the list, it shall not be necessary to add the heirs or devisees of such contributory, though by 3 and 4 Wm. IV, C. 104, the liabilities attaching to shares are debts charged on the real estate of the testator in the hands of his heirs and devisees.

Of course numerous cases may occur, even with the machinery provided by the section, in which difficulty may be experienced regarding the proper representatives of the deceased member; but the section is especially valuable in cases of intestate succession, and where no regular adr'nistrator of the estate of the deceased has been appoin'

And the rule with regard to executors will apply *cæteris paribus* to assignees in bankruptcy. By the English Bankruptcy Act of 1869, section 23, the trustee in bankruptcy might either sell and transfer the shares of a member, or, if the shares were onerous, might disclaim them. The effect of such a disclaimer would be that the shares would be deemed to be forfeited from that date.[3] Calls made before the bankruptcy or due before the estate is wound up, are proveable under the Insolvent Act, and rank on the estate.[4]

5.—Transfer by Representative.

46. Any transfer of the share or other interest of a deceased member, made by his personal representative, shall, notwithstanding such personal

[1] Keene's, Executors' Case, 3 D. M. & G. 272.

[2] *Adams* v. *Terrick*, 26 Beav. 384, 393.

[3] Buckley, 3rd Ed., p. 374.

[4] But as to calls not made at the time of the insolvency *quære*. There appears, however, to be no reason why they should not rank the same as notes not yet due.

representative may not himself be a member, be of the same validity as he had been a member at the time of his execution of the instrument of transfer.

Under this section (which is identical with section 24 of the English Act) a transfer by an assignee to the bankrupt estate of a member would be as valid as though made by the member himself; but *in re* The London and Provincial Telegraph Company,[1] in which the Company, five years after the shares of a member had been taken possession of by his assignee and sold, having received no notice of the bankruptcy, issued to the shareholders executrix duplicate certificates on a statutory declaration that the original certificates had been lost, the executrix sold the shares and executed a transfer, and it was registered. Held, the purchaser's title prevailed against the assignee's.

But in a case in New Brunswick, the executors of the estate of C. invested a portion of its funds in bank stock in their own names, but for the benefit of the estate by which the dividends were received. After their death, their representative, by writing, agreed to transfer the stock to the widow of C., who had taken out letters of administration *cum testamento annexo de bonis non*. The stock certificates were handed over to her, and she afterwards received the dividends, but no transfer was made on the books of the bank as required by its charter and by-laws. The bank suspended, and the estates of the executors were placed by the judge on the list of contributories for the stock standing in their names on the register. Held, that they being *prima facie* legally liable, the judge was right in not altering the register by substituting the party equitably entitled to the stock.[2]

6—Liability of Members on Stock.

47. Each shareholder, until the whole amount of his shares has been paid up, shall be individually liable to the creditors of the Company to an amount equal to that not paid up thereon; but shall not be liable to an

[1] L. R. 9 Eq. 653.
[2] Stevens' Dig., p. 764.

action therefor by any creditor, before an execution against the Company has been returned unsatisfied in whole or in part; and the amount due on such execution, not exceeding the amount unpaid on his shares, as aforesaid, shall be the amount recoverable, with costs, against such shareholder, and any amount so recoverable, being paid by the shareholder, shall be taken as paid on his shares.

48. The shareholders of the Company shall not, as such, be held responsible for any act, default, or liability whatsoever of the Company, or for any engagement, claim, payment, loss, injury, transaction, matter or thing whatsoever, relating to or connected with the Company, beyond the amount unpaid on their respective shares in the capital stock thereof, subject to the provisions of the next preceding section.

(*a*) *Restricted to amount unpaid.*—These two sections cover precisely the same ground. They define and describe the liability of the members towards the creditors of the company. The members of a company formed under the English Act of 1862, may be liable in one or the other of two ways. They may be liable to the amount unpaid on their shares as here described or they may be liable to such an amount "as the members may respectively undertake to contribute to the assets of the company in the event of its being wound up."[1] This liability is determined by the memorandum of association. Under the present Act no such alternative is provided for. The principle of liability "limited by shares" has been adopted purely and simply. This is the only form of company which can be created under the Act and indeed by all the Canadian Acts. And the reason is probably this. It is by far the simplest form, the best known, and the most readily understood. And where no alternative is presented no doubt can exist as to the extent to which the members in any company formed under it are liable. If the shares of any holder are fully paid up he bears no liability whatever, in respect thereof for the affairs of the company. He is, as far at least as the outside world is concerned, as though he was a perfect stranger to it. A member to day and interested, it may be to the extent of thousands of dollars in its prosperity, entitled to take part in its meetings and influence its affairs,

[1] Act 1862, sec. 7.

to-morrow, may have severed all connection with it, and care not one straw whether it succeeds or fails. And while the shares remain in his hands his only liability in respect of them is, that he may lose some portion of what he may have paid for them, a portion generally determined by the affairs of the company and the "condition of the market."

This liability to loss however is always set-off by a corresponding chance of gain, of the balance of which the holder (or some one for him) may judge and may govern himself accordingly. His liability, in short, is that of the holder of any other merchantable commodity, which may fall or rise in value according to the market, and no other.

But with the holder of unpaid shares, the case is somewhat different. He is still liable in respect of them to the amount which has not been paid-in, and is, as will be seen hereafter,[1] subject to an action at law for such amount, either at the suit of the company or its creditors. And this liability, to pay, is always exigible, subject only to the formality on the part of the company to make what are known as "calls"[2] for the whole or a part of that which remains due. The creditors of the company also may require payment of the balance due at any time on evidence, that the amount of the claim cannot be realized from the assets of the company, or might, under the Dominion Insolvent Act of 1875,[3] cause proceedings to be taken with a view of winding up the company,[4] when all amounts unpaid on stock may be called in by the Receiver or Assignee.

This liability may be incurred in several ways:

By subscription of the share list before incorporation, provided the subscriber has been made a corporator according to the terms of his subscription.[5]

[1] *Vide post.*
[2] *Vide* sec. 52 *post.*
[3] Now abolished.
[4] *Vide post.*
[5] *Union Navigation Co.* v. *Conillard*, I. Leg. News, Mon., 201; and same v. *Rascony*, 24 L. C. Jur., 133.

1. By subscription or allotment subsequent to incorporation.[1]

2. By purchase.[2]

And this liability may be repudiated on the ground

1. Of conditions not agreed, to attached to the allotment.[3]

2. Of misrepresentation, concealment or fraud of any kind on the part of the company or its agents, by which the person sought to be held was induced to undertake the liability.[4]

But it may be laid down as a rule that no shareholder can escape liability or repudiate his membership by reason of irregularities on the part of the directors or dissatisfaction with their management of the company. His proper course in such case is to sell out at the best advantage he can. And even though the company may have done acts amounting to, or rather which would authorize a forfeiture of its charter under the Act, or under its special Act, if created by special Act, without first taking proceedings to have such forfeiture pronounced.[5] But suppose the company had forfeited its charter by its Acts, and the forfeiture had been pronounced, would that relieve the shareholder, even though a non-consenting member to the Acts in question, from his liability? It does not appear that that could be, either. Indeed, such a pretension would be too absurd to be entertained for a moment. The liability of a share-

[1] *Vide* Allotment *supra*, p. 241.

[2] *Vide* Transfer *supra*, p. 264.

[3] *Vide* Allotment *supra*, p. 241.

[4] *Vide* Transfer *supra;* but only while the Company is going and before a winding up order is made. *Tennent* v. *City of Glasgow Bank*, *post.*

[5] *Windsor Hotel Co.* v. *Murphy*, 1 Legal News, p. 74. In that case, however, Johnson, J. remarked:—"I would not be prepared to say that he could not ask that the demand *quant a present* should be stayed if the proceedings under which these calls have been made were irregular," but held at the same time that the payment of previous calls to which the same objection could have been raised was an acquiescence in the irregularity. And see *Quebec & Richmond Ry. Co.* v. *Dawson*, in which it was held that a plea of non-compliance with its charter was a good plea to an action for calls. 1 L. C. R. 366.

holder for the balance unpaid on his shares is due really to the creditors of the company. It is, in reality, a liability to contribute to the assets of the company, or, in other words, to the security which the creditors have for their claims. The shareholder is a guarantor of the undertaking of the company to the amount unpaid on his shares. And if, in consequence of irregularities on the part of a majority of the company, or rather of a majority of the members present at any regular meeting, he could repudiate his liability, then all those who did not consent to such irregularities might do so, and the creditors would find a great portion—perhaps the greatest portion—of their security suddenly wiped out. So that the most a plea of forfeiture could effect would be to *defeat the right of the company* to such action, (which it would undoubtedly do if the forfeiture had been pronounced)[1] and to postpone the obligation to pay until the rights of the creditors could be enforced in a more regular manner.

(*b*) *How terminated.*—The liability of a shareholder may be terminated and discharged

By payment, which must be in cash,[2] except where a contract in writing is registered to the contrary.

(*c*) *Surrender of shares.*—By surrender, where provided for by the charter or regulations of the company. But where such power is not specially provided for in some manner, it does not appear to exist. "In the absence of a special authority of this kind," says Healy,[3] "there is no inherent power in directors to accept a surrender of shares; nor is the acceptance of the surrender a matter lying between the majority and the minority.[4] But a member may nevertheless surrender his shares without first paying them up in full if the Articles of Association order the surrender."[5]

[1] As to forfeiture of charter by non-user. See sec. 72 *post*.

[2] *Vide* sec. 83 *post* and *supra*, p. 255.

[3] p. 76.

[4] *Ib*, and cases there cited.

[5] *Ib*, p. 77.

The right or power of a company to accept a surrender of its own shares is the same as a power to deal in them. And as such power, if it exist at all, can exist only for the benefit of the company, any acceptance of a surrender of shares not wholly paid up, would simply be a matter of bargain as for a transfer between two individuals. Assuming such power to exist, the company could say to the shareholder, "You have paid so much on your shares, and at the present market value they are worth so much; we will accept your shares for the balance due on them (or up or down, as the case may be) and guarantee you against any further liability in respect of them." That this is simply dealing in its own shares is therefore evident, and may be still further inferred from this that to accept a surrender of shares and retain them in their hands would be reducing the capital of the company, which it has no power to do, except in the manner provided for in the Act.[1] They would therefore have to be re-issued to other parties on such terms as they could, which would amount, as before stated, to a mere trading in its own shares.

That a company under the Act has power to do this is doubtful. Unless the dealing in shares generally was one of the objects for which the company was formed, as set forth in its letters patent, it seems clear that they could not. *In re* Zulueta's claim,[2] it was said that though a company empowered to deal in shares generally, they may not buy their own shares, unless specially authorized so to do. And by section 10 of the Act, a company is invested with all the powers, etc., "requisite or incidental to the carrying on of its undertaking," of which the dealing in shares, except as aforesaid, can scarcely be said to belong. Such a dealing would be a mere speculation, and one which would necessarily place the creditors of the company in a very precarious position[3]—at least so far as the transactions extended

[1] *Vide supra*, p. 155.

[2] L. R. 5, Ch. 444.

[3] As to dealing in the shares of other companies, see Act of Quebec, 31 Vic., cap. 25, sec. 41; and *supra*, p. 143.

to unpaid shares. It can scarcely be believed, therefore, that without an express power in the letters patent, that a holder of unpaid shares can be relieved of liability by the company on any terms whatever.[1]

(*d*) *Surrender and forfeiture.*—A good deal of misapprehension seems to have arisen from confounding the terms *surrender and forfeiture*, between which there appears to be no connection or affinity whatever. The power to forfeit shares given by this Act,[2] by which no change is effected in the liability of the holder, must be regarded (for the reasons already given) as totally distinct from that of accepting the surrender of shares and relieving the holder from any further liability. This is clear, also, from Hall's case,[3] where the terms "surrender and forfeiture were used conjointly in a number of provisions concerning forfeiture, one of which was that the member should continue liable notwithstanding the forfeiture, to pay all calls owing at that time; and in which it was held that a surrender could not be accepted by the company on the same conditions.[4] And in the same case it was said that where the liability cannot be evaded by surrender, a transfer to a nominee of the company will not be more effectual." Persons wishing to get rid of their shares would do well to bear in mind that a forfeiture of shares *may be supported* under a provision giving directors power to declare forfeitures, where a transfer to the company would be void *as dealing in shares.*"[5] But in Hollowey's case,[6] a transfer to a trustee for the company was held good on the ground that the transferer had no

[1] But where the directors had a special power to this end it was held that they might use it without imputation of fraud in removing the opposition of a shareholder to a voluntary winding up for the purpose of amalgamation with another Company. Wright's Case, L. R. 12 Eq. 331, 342.

[2] *Vide* sec. 55 *post*.

[3] L. R. 5, Ch. 707.

[4] In this case, however, the Company were expressly prohibited from dealing in shares.

[5] *Ibid*, and see Collier's Law of Contributories, p. 201. Nothing can better illustrate the confusion which seems to have prevailed concerning surrender and forfeiture than the remark here quoted.

[6] 1 De. G. & Sm. 777.

notice that the transferee was a trustee. But in Benham's case,[1] where a shareholder transferred his shares to the cashier at the company's office, (after refusing one transferee on the ground that he was a trustee for the company), he was held still liable as having known that the cashier was a trustee. And in Cross' case,[2] a transfer to directors was held void on the ground that they were trustees for the company, although the transferer assented that the transfer was to them in their personal capacity. A still stronger and more recent case of the same kind was that of *Cree* v. *Somervail, et al.*[3] In that case the Articles of Association of a Scotch company limited, contained the following provision: "No transfer of any share of the company's stock, either upon a sale or in consequence of the bankruptcy or insolvency of any shareholder, or in consequence of the marriage of any female shareholder, shall be valid or effectual without the consent of a majority of the other shareholders expressed in writing. But in case of the other shareholders declining to consent to such proposed transfer of shares in the company, they shall be bound to take such shares at the price offered in the case of a proposed sale, and at the market price of the day, in the case of a proposed transfer from any other cause; unless such shares shall not at the time be fully paid up, and the reason for declining to consent be, that the directors are not satisfied with the proposed transferees." A., B., C. and D., four directors of the company, agreed to purchase fifty £100 shares in the company, on each of which £1 had been paid up, from persons who had been placed on the register as trustees and executors of T., deceased, and a transfer was executed in favor of A., B., C., in trust for the company. D. was also one of T.'s trustees and executors. There was no suggestion of *mala fides*. The purchase money was paid out of the funds of the company, and A., B. and C. were entered in the register of the company as transferees of the

[1] 13 W. R. 483.

[2] 17 W. R. 1006.

[3] 28 W. R. 34.

shares in trust for the company. Their names remained on the register for more than fifteen months, when the company was voluntarily wound up. The liquidator then presented a petition for the rectification of the register by substituting the names of T.'s trustees for the names of A., B. and C., on the ground that the purchase of the shares by the directors in trust for the company, was *ultra vires*. Held, that the purchase by directors was not authorized by the Articles of Association, but the names of A., B. and C. could not be removed. However, in Singer's case,[1] where the directors were authorized by the company's articles to act as they should deem expedient, a shareholder who dissented from some proceeding of the company, and was allowed to transfer his shares to a nominee for the company, was held not to be a contributory in respect of the shares transferred.

Old shares also may be surrendered for new ones (where an issue of the latter is authorized) but this cannot be said to effect any change in the liability of the holder in respect of his shares.

The liability of the holder may be terminated also by a *bona fide* sale and transfer of his property in the shares to another, provided, as has been pointed out,[2] that such other is accepted by the company and an entry of the transaction made in the books of the company before a winding up is commenced. But as long as a person's name appears upon the books of the company as a stockholder, the presumption is that he is owner of the stock, and in an action to enforce payment of an assessment, the burden of proof is upon him to show that he is not a stockholder.[3]

[1] W. N. 1869, 206; and see Buckley, 3rd Ed., p. 33. But it is hard to see how this case can be reconciled with the two proceeding ones.

[2] *Vide supra.*

[3] *Turnbull* v. *Payson*, 16 Banks Ry. 440, Su. Ct. U. S., 1877; Abb. Dig.' Vol. II.

7—Liability of Executors, Etc.

49. No person holding stock in the Company as an executor, administrator, tutor, curator, guardian or trustee, shall be personally subject to liability as a shareholder; but the estates and funds in the hands of such person, shall be liable in like manner, and to the same extent, as the testator, or intestate, or the minor, ward or interdicted person, or the person interested in such trust fund would be, if living and competent to act and holding such stock in his own name; and no person holding such stock as collateral security, shall be personally subject to such liability; but the person pledging such stock shall be considered as holding the same and shall be liable as a shareholder accordingly.

(*a*) *Of trustees.*—The subject of the liability of executors, administrators, or others representing a deceased shareholder, has already been adverted to,[1] but it may be here stated that the principles which apply to them do not apply under the English Act to those holding as trustees. By section 30 of the Act of 1862, trustees are expressly ignored.[2] And the object of this is said to be to relieve both the company and its creditors from the responsibility of enquiring after persons for whom shares are held in trust.[3] The trustee, therefore, is not as by this section exempt from personal liability towards the company and its creditors. The effect of the present section is to allow stock to be held with the utmost freedom in a representative capacity, and to carry the same rights and privileges as though the trustee were personally responsible.[5]

(*b*) *Of pledgee.*—And this extends to the holding of stock as collateral security, which may be done under this section without effecting any change in the absolute ownership of the shares, or in the liability arising from them.

[1] *Vide supra.*

[2] The wording of the section is—No notice of any trust express, implied or constructive, shall be entered on the register, or be receivable by the registrar in case of companies under this Act, and registered in England or Ireland.

[3] Buckley, 3rd Ed., p. 73.

[4] *Vide, Muir* v. *City of Glasgow Bank*, 27 W. R. 603; L. R. App. 337; and many other cases arising out of that disaster.

[5] *Vide* sec. 50 *post.*

[6] *Ibid.*

The position therefore, of a pledgee, is similar to that of a trustee, except as regards representing the stock at meetings, etc., the right of voting thereon remaining in the pledgor.[1] Under the English Act also the liability is said to remain in the pledgor, but by a process of reasoning the reverse of that here stated, the pledgor being called the trustee, and the pledgee the owner or *cestui qui trust*.[2]

8—Rights of Executors, Etc.

50. Every such executor, administrator, curator, guardian or trustee, shall represent the stock in his hands, at all meetings of the Company, and may vote accordingly as a shareholder; and every person who pledges his stock may nevertheless represent the same at all such meetings, and may vote accordingly as a shareholder.

(*a*) *Of pledgor.*—By this section a different rule is made with regard to the right of a pledgee to vote on the stock held by him from that of a trustee. But in the United States, held that where the pledgor of stock has for many years acquiesced in the control thereof by the pledgee, who appears by the books of the corporation to be the owner, a Court of Equity will not, in the absence of any showing of fraud, interfere to aid the pledgor in asserting control of it at a contested election of directors.[3]

9—Liability of Company in Respect of Trusts.

51. The Company shall not be bound to see to the execution of any trust, whether express, implied or constructive, in respect of any share; and the receipt of the shareholder in whose name the same may stand in the books of the Company, shall be a valid and binding discharge to the Company for any dividend or money payable in respect of such share, and whether or not notice of such trust has been given to the Company; and the Company shall not be bound to see to the application of the money paid upon such receipt.

The object of the section is to simply avoid any doubts as to the liability of the company towards either the trustee

[1] But in *Smith* v. *American Coal Co.*, held that a transfer of stock as collateral security transferred all the owner's title both legal and equitable subject only to liens or claims of the corporation. 7 Laws 317, Su. Ct. N. Y., 1873.

[2] Sichell's Case, L. R. 3, Ch. 119.

[3] *Hoppin* v. *Buffum*, 9 R. J. 513, Su. Ct., 1870; and *vide supra*.

or *cestui qui trust*, with regard principally to the payment of dividends or other moneys arising from shares held in trust; but nothing in the section, it may be conceived, is intended to absolve the company from liability for neglect to make any entries in the books of the company, which may be required in regard to such shares.

10—Calls.

52. The Directors may, from time to time, make such calls upon the members in respect of all moneys unpaid upon their respective shares, as they shall think fit, at such times and places and in such payments or instalments as the letters patent, or this Act, or the by-laws of the Company may require or allow.

53. A call shall be deemed to have been made at the time when the resolution of the Directors authorizing such call was passed; and if a shareholder fails to pay any call due from him, before or on the day appointed for the payment thereof, he shall be liable to pay interest for the same, at the rate of six per cent per annum, from the day appointed for payment to the time of actual payment thereof.

(*a*) *Power of Directors.*—The power of the directors to make by-laws to regulate the making of calls is laid down in section 32,[1] which indicates the powers of the directors generally.

(*b*) *Meaning of term.*—The term "call" is used indifferently to denote a demand made upon the shareholders for a contribution, or the amount or sum of money demanded. It is used in both senses in both of the above sections.

(*c*) *What are.*—But though used to denote both the demand and the money demanded, it is used exclusively with reference to the liability of a shareholder on his shares. All moneys, however, paid in on account of shares, are not necessarily calls. This fact was brought out in *Croskey* v. *Bank of Wales*,[2] in which it was held that deposits made on application, or payments made on allotment, were not calls; and that consequently, though the prospectus stated that

[1] *Vide supra*, p. 216.
[2] 4 Giff. 314.

calls should not exceed £5, and that at least three months should intervene between the times of payment of two successive calls, a call of £5 might be made within three months from the making of a deposit of £1, or payment on allotment of £1.[1]

(*d*) "*The directors.*"—That is, the number of directors which, by the by-laws of the company, constitute a quorum, or the number to which, by the same authority, is confided the management of these matters. That a call made by less than the required number is valid, is considered doubtful,[2] as a call to be enforceable must be authorized in a regular manner. Nevertheless, where the charter of a company provided that there should be twelve directors, and that five should be a quorum, and a call was made when the entire Board consisted of only seven directors, it was held that the provision was only directory, and that the call could be enforced.[3] It will be observed, however, that in this case the prescribed quorum may have been present notwithstanding the deficiency in the total number of directors. But where an action was brought on a call made by certain subscribers of the memorandum of association of a company, and it appeared that the persons who made the calls were not such a quorum of the subscribers of the memorandum as the company's Articles required, the defendant was held not liable.[4] Nevertheless, a call made at a meeting at which the necessary quorum of directors was not present, and confirmed when a quorum was present, was in another case held good.[5] And calls made by directors who are such *de jure*, though not *de facto*, are good; though calls made by unauthorized persons or by directors not properly appointed, are invalid.[6] In such cases, it is said, "a company is seeking to enforce against a member duties

[1] Healey, Joint Stock Cos., p. 110.
[2] Healey, Joint Stock Cos., p. 103.
[3] *Thames Haven Dock Co.* v. *Rose*, 4 M. & Gr. 552.
[4] *Howbeach Coal Co.* v. *Teaque*, 5 H. & N. 151; 29 L. J. Ex. 137.
[5] *In re* Phospate of Lime Co., Austin's Case, 24 L. T. 932.
[6] *Garden Gully Co.* v. *McLister*, 1 App. Cases 39.

purporting to be imposed upon him by persons to whom he and his co-shareholders have never delegated the authority of imposing such duties."[1] And in the United States, held that the number and qualification of directors, as fixed by the charter, must be adhered to in order to make calls valid.[2] But in Upper Canada, a call of four per cent. on the first investment of five per cent. made by a quorum only, and not by a majority of the directors, was held a good call under section 9 and 12 Vic., cap. 166, Plaintiff's Act of Incorporation.[3]

(*e*) "*May from time to time, etc.*"—The liability of a shareholder to contribute to the assets of a company until his shares are fully paid up, is a debt which is always due[4] and subject to be called when and how the directors may determine.[4] But though this is the case, it is usual to make by-laws to regulate the length of notice to be given,[5] the time which shall elapse between two successive calls, the amount of each call, etc. And that this is contemplated by the Act is clear from the last part of section 52, which subjects the directors in determining when calls shall be made to the rules already existing on that subject. But beyond these, the directors are governed solely in their action as to calls by the requirements of the officers of the company. And to this end the power of the directors to make calls is a fiduciary one and must be exercised exclusively in the interests of the shareholders.[6] But the Court will not in general take upon itself to decide as to the propriety or necessity of a call. In *Bailey* v. *Birkenhead Railway Co.*[7] it was said that this is such an interference with the internal man-

[1] Buckley, 3rd Ed., p. 151.

[2] *Macon, etc., R. R. Co.* v. *Vason*, 57 Ga. 314; Su. [illegible]

[3] *Ontario Marine Ins. Co.* v. *Ireland*, 5 C. P. 139; [illegible]on's Digest, 75[illegible].

[4] It is the same as the liability on a note payal[illegible] demand. By English Act it is said to be a debt *accruing due from such person at the time when his liability commenced;* but payable at the time, or respective times, when calls are made. Act 1862, sec. 75.

[5] By the table of regulations appended to the English Act 21 days notice is fixed.

[6] Gilbert's Case, L. R. 5, Ch. 559.

[7] 12 Beav. 433; and see Buckley, p. 362.

agement of a going concern as the court will decline to undertake. A call, however, may be illegal as being made for a purpose not warranted by the constitution of the company, that is to say, for something not within the objects of the company, as, for instance, to purchase stock in other companies where the power to invest in the stock of other companies, is denied by the Act under which it is formed, or by its letters patent. And if it be shown that the call has been made for an illegal purpose, such call cannot be enforced. And in a number of cases, held that the Court would interfere at the instance of a minority of shareholders, or even of a single shareholder; on the principle that one of several shareholders or partners is entitled to protection against the illegal acts of a majority.[1]

(*f*) "*And in such payments, etc.*"—The amount of a call when not regulated by the by-laws is in the discretion of the directors, and is governed by the above rules. But when so regulated, the regulation must be adhered to. Nor can the directors group the calls into one call, payable by instalments of the same amounts, and at the same distances of time, as if made in the regular way.[2] But a call is not irregular because prospective, that is to say, because made before the money was actually required, but when it was apparent that it would be required about the time called for.

(*g*) "*A call shall be deemed to have been made, etc.*"—A call is made upon resolution of the directors. The by-laws of the company should prescribe whether such resolution can be passed at an ordinary meeting of the directors, or whether a meeting should be called for the purpose. This resolution should be duly entered in the minutes of the meeting; but whether such entry was necessary to the validity of the call, and whether, if so, it was necessary that the minute should be signed, was discussed in some Eng-

[1] Buckley, 3rd Ed., p. 302; and authorities there cited.

[2] *Stratford & Moreton Ry. Co.* v. *Stratton*, 2 B. & A. 518; and *Moore, et al*, v. *McLaren*, 11 C. P. 534; Robinson's Dig., 756.

lish cases, and gave rise to a difference of opinion among the judges presiding thereat. But under the present Act these questions would not be likely to arise, as by section 56[1] a certificate under the seal of the company, and purporting to be signed by any officer of the company, is *prima facie* evidence that such call has been made.[2]

(*h*) *Notice of call.*—The length of notice required to be given of a call is generally provided for by the rules of the company, but the call itself dates from the passing of the resolution, and not from the time the notice is given or received.[3] And if a certain time must elapse between two successive calls, that time must be reckoned exclusive of the day on which the resolutions were passed. Thus, where an Act says that no instalment shall be called for, except after the lapse of one calendar month from the time when the last instalment was called for, calls made for first of May, June, July and August would be illegally made.[4] And in New Brunswick, held that the full time of thirty days must elapse between the time appointed for the payment of each instalment, and that it was not sufficient in one notice to call for payment of several instalments at intervals of less than thirty days. But though one call cannot be enforced for want of sufficient notice, that does not vitiate other calls in the same notice where the full time was given.[5] In *Rudolph* v. *The Inns of Court Co.*,[6] it was held that a shareholder is not indebted on account of a call until due notice of such call and of the time and place for payment of it shall have been given in accordance with the regulations of the company. And in *Macon, etc. R. R. Co.* v. *Vason*, held, that if a charter expressly requires notice to be given in certain newspapers for a certain number of days before calls shall be valid, the company cannot recover

[1] *Vide post.*

[2] And so also by the Act of Quebec, sec. 28.

[3] This is in accordance with the English Acts and regulations. *Vide* Art. 5, Table A, Act 1862.

[4] *Gas Co.* v. *Russell, et al*, 6 Q. B. 567; Robinson's Dig., 755. Stevens' Dig., p. 760.

[5] 8 L. T. N. S. 551.

upon an assessment without showing that notice was so published.[1] And by sections 63 and 64 of this Act,[2] such notice may be served either personally or by post, registered, "addressed to the members at their place of abode, as it appears on the books of the company." And such service will be held to be effected at the time when it would be delivered in the ordinary course of post.[3] And proof of these facts is by the same section proof sufficient of the service of the notice.

(*i*) *When a call is deemed to have been made.*—The settlement of the time when a call shall be deemed to have been made is important in ascertaining who is liable for a call. For as a certain length of time, called a "notice," s allowed usually to elapse between the date of the resolution and the date of payment, it is evident that in the interim the shares in question may change hands, and thereby, unless otherwise determined, effect a change in the person liable thereon. This question was a good deal discussed in some of the English cases, but provision for its settlement is now pretty generally made on the principle here laid down, according to which no change would be effected in the person liable to the call by a transfer during the period mentioned.

(*j*) "*Shall be liable to pay interest, etc.*"—But though a call is deemed to have been made on the day the resolution was passed for the purpose just stated, it is not so for the computation of interest on arrears, which runs at the legal rate of six per cent. per annum from the day appointed for payment. On this question of interest, also, one or two interesting points have been raised in the English cases. Thus, *in re* the Welsh Flannel Co.,[4] Malins, V. C., *held*, that the provisions as to interest on arrears of calls applied only to directors calls, and not to calls made by liquidators. And also

[1] 57 Ga. 314, Su. Ct., 1876.

[2] *Vide post.*

Compare notice of Allotment, *supra*, p. 245; and cases there cited.

[4] L. R. 20, Eq. 360.

where the shares were forfeited for non-payment, it was held that interest did not run after the date of the forfeiture, although the holder was still liable for the arrears.[1] And *in re* Overend, Gurney & Co.,[2] it was held that where it was ordered that in default of payment on a certain day, interest would be charged on calls made in a winding up, payment into Court to a "security account" till the liability of the contributories had been established, was not payment so as to stop interest.

54. The Directors may, if they think fit, receive from any member willing to advance the same, all, or any part of the amounts due on the shares held by such member, beyond the sums then actually called for; and upon the moneys so paid in advance, or so much thereof as shall from time to time exceed the amount of the calls then made upon the shares in respect of which such advance shall be made, the Company may pay interest at such rate, not exceeding eight per cent. per annum, as the member paying such sum in advance, and the Directors shall agree upon.

(k) Payment of calls in advance.—This section is identical almost with Art. 8 of Table A, appended to the English Act of 1862, from which it is evidently taken. The object of it appears to be to enable a company in immediate need of money to receive it from shareholders, able and willing to advance it, before a call is payable, or before it may be considered expedient for any reason to make a call. The section differs from the provision in the English regulations referred to, only in placing a limit to the rate of interest, which the directors may agree to pay for such advance. The limit may be regarded as a useful check to the temptation, which a director, with capital, might be under to advance money (with the connivance of his co-directors), at a rate of interest greater than he could obtain elsewhere, and than was warranted by the necessities of the company.

This power to receive moneys on shares in advance of calls, it was held in Gilbert's case,[3] is, like the power to

[1] Stoekens' Case, L. R. 5; Eq. 6 & 3, Ch. 412.
[2] *Ex. p.* Lintott, L. R. 4 Eq. 184, and Barrows' Case, L. R. 3, Ch. 784.
[3] L. R. 5, Ch. 559.

make calls, a fiduciary power, which the directors are bound to exercise *bona fide* for the interests of the company. And therefore, where directors paid into the bank, the amounts remaining uncalled on their shares, and then appropriated the money to the payment of their fees, for which there were no other available assets, it was held that, having acted for their private interests only, they were not relieved from liability on their shares.[1] But in Poole's case,[2] held that the directors are trustees for the shareholders only, and not for the creditors; and the latter cannot complain, if they have exercised this power in such manner as to diminish the fund available for the company's debts.

11—Forfeiture of Shares.

56. If, after such demand or notice as by the letters patent or by-laws of the Company may be prescribed, any call made upon any share or shares be not paid within such time as by such letters patent or by-laws may be limited in that behalf, the Directors, in their discretion, by vote to that effect duly recorded in their minutes, may summarily declare forfeited any shares whereon such payment is not made, and the same shall thereupon become the property of the Company and may be disposed of as, by the by-laws of the Company or otherwise, they may ordain; but, notwithstanding such forfeiture, the holder of such shares at the time of forfeiture shall continue liable to the then creditors of the Company for the full amount unpaid on such shares at the time of forfeiture, less any sums which may have been subsequently received by the Company in respect thereof.

(*a*) "*If after such demand, etc.*"—The question of forfeiture has been already alluded to.[3] It has been pointed out that the power granted to the directors to forfeit shares in default of payment of calls therein, has been, without reason, associated with the power to accept a surrender of shares, though on examination, they appear to have no real connection whatever. The latter is a matter purely of bargain and agreement between the company and the shareholder, which, if it exist at all, must be exercised on the part of the directors with a sole regard to the interests

[1] Sykes' Case, L. R. 13 Eq. 255.
[2] W. N., 1878, 102, 139; 38 L. T. 413, 659; 26 W. R. 588, 823.
[3] *Vide supra*, p. 297.

of the company, while the former must be regarded as a penalty placed in the hands of the company wherewith to influence delinquent subscribers. It is clear that no such right could be held to exist at common law. To hold that there existed any inherent right in a company to say to a shareholder "because you are in default a month, or a week, or a day, to pay a call which the company has made on your shares, therefore you shall be deprived of that which you have already paid, of your interest in the company, and of your right of membership, and that without being in any way released from your obligation to pay the call or calls in question, would be to give every man a right to seize hold of anything belonging to his neighbor who was in default to pay him what he owed, and to deprive him of it without any form or process of law whatever. It would be to lay down a principle in utter violation of the rights of property as sanctioned by the common law.[1]

The power, then, to forfeit shares on which anything has been paid (as here provided) must be regarded as a portion of the penal power of Parliament conferred upon such a society or association of persons known as a Joint Stock Company under the Act, in order the better to enable it to govern its members and secure a successful administration of its affairs.[2]

And being so and for such purpose conferred must be treated as *strictissimi juris*.[3] And therefore, where the subscription contract of a company conferred upon directors a power to forfeit the shares of those who should refuse to execute the deed of settlement, it was decided that the directors had no right to make the payment of a call a

[1] It is therefore by the present Act placed more correctly among the remedies granted by the Act to the Company against defaulting shareholders.

[2] *Vide* Thring, Joint Stock Cos., p. 78; and cases there cited. Every society or sub-community recognized by law is an *imperium in imperio*, and in order to carry out the objects of its existence must be endowed with a portion of that power which belongs to the chief community—the State itself.

[3] *Hart* v. *Clarke*, 6 De. G. M. & G. 232; 6 H. L. C. 633.

necessary preliminary to the execution of the deed, and so enable them to forfeit the shares of a person neglecting to pay the calls.[1] And in *Johnson* v. *Lyttle's Iron Agency*, it was said that as against the company a very little inaccuracy in complying with the conditions precedent to a forfeiture was as fatal as the greatest, and such forfeiture would be restrained by injunction. In that case, in the notice sent by the secretary of a company to a shareholder to pay an overdue call or assessment, the latter was notified to pay the call with five per cent. interest from the day the call was voted, or he would forfeit his stock, whereas the rules of the company prescribed interest in such cases only from the day when the call became payable. Held, that the notice was invalid, and no forfeiture took place. And even where the forfeiture was shown to be oppressive, though not invalid, it was restrained.[2] And in *Preston* v. *The Grand Collier Dock Company*,[3] it was held that directors would be restrained from declaring a forfeiture until they have taken proper steps for enforcing payment of *previous* calls from other members. And where shares had been legally forfeited, but the power had been improperly exercised, held that an action of damages would lie against the company.

As to matters of form, however, a distinction must be made between formalities preliminary to the forfeiture and formalities subsequent to it. Thus, by the present section, a demand of payment and notice to be regulated by the by-laws is contemplated, and an omission to make such demand or serve such notice would be fatal to the forfeiture. So also, if the forfeiture is declared within the time allowed by the notice (which must be exclusive of the day of the notice and of the resolution to forfeit[6]), or the resolution is not regularly passed and

Healey, p. 87; and *Norman* v. *Mitchell*, 5 De. G. M. & G. 648

[2] 5 Ch. Div. 687.

[3] *Goulton* v. *London Architectural Co.*, W. N. 1877, 141.

[4] 2 R. C. 335.

[5] Shelford, 2nd Ed., p. 133; and cases there cited.

[6] *Vide supra. Calls.*

entered according to the terms of the section. Thus, where the regulations of a company provided, that there should be a right of forfeiture of shares on giving ten clear days' notice, and notice dated the 27th of February was sent, warning shareholders that their shares would be forfeited "Monday, the 9th March;" it was decided that the notice was altogether insufficient, because the 9th of March did not fall on a Monday, but on a Friday, and also because it did not provide more than nine clear days.[1] But where the company's articles prescribed that notice should be given to the holder *after* the forfeiture, it was held, to be simply directory, and that the forfeiture was valid though no notice had been sent.[2] But where, as by the present section, the notice referred to is preliminary to the forfeiture, payment may be made at any time before the expiration of the notice.

(*b*) *Forfeiture after surrender.*—But it appears that, after an acceptance by the directors of a surrender of shares, the company in general may still declare a forfeiture. In *Barry* v. *Navan and Kingscourt Railway Co.*,[3] A. who was registered as a shareholder of unpaid shares in a railway company sent a letter to the chairman proposing to surrender them. The directors passed a resolution, accepting the surrender, but at a general meeting a few months later the shares were declared to be forfeited. No further step was taken by A., or the directors, and a creditor of the company took proceedings against A. on a *scire facias*. *Held*, that A. remained liable as a shareholder.

(*c*) *Illegal forfeiture.*—But the right of redress or recovery against an improper or illegal forfeiture may be lost by lapse of time. And consequently, if a person, whose shares have been declared forfeited, submits for a considerable period, he will be held to have acquiesced therein.[4]

[1] Healey, p. 99; and *Watson* v. *Eales*, 23 Beav. 294.
[2] Knight's Case, L. R. 2 Ch. 321.
[3] 4 L. R. Ir. 68.
[4] Cox, 7th Ed., p. 27; and cases there cited.

And where therefore as in Woollaston's case,[1] the forfeiture had been allowed to stand for three years, it was confirmed by acquiescence. But if a forfeiture be *ultra vires* of the company or directors, no lapse of time can render it valid.[2] And in the *Garden Gully Co.* v. *McLister*,[3] it was said that mere laches would not dis-entitle a shareholder to relief against an invalid declaration of forfeiture. But the forfeiture will not be set aside on the ground that it was made in consequence of an accidental omission or neglect on the part of the shareholder.[4] Nor when a forfeiture has been validly declared, can it be disturbed by liquidators appointed to wind up the company.[5]

But where directors have the power to remit a forfeiture, if the terms of remission are substantially complied with, they will be compelled to re-instate the applicant as a shareholder, although he may not have brought himself strictly within the letter of those terms.[6]

(*d*) *Holder still liable*—And the exercise of the right of forfeiture is not a waiver of the right of recovery otherwise accorded; being rather regarded as a penalty imposed in addition to other remedies which the company under the Act and under its charter possesses. This was the effect of the judgment in *Harris* v. *The Dry Dock Co.*, in Upper Canada,[7] in which it was held that one of the partners of a trading company then insolvent, was entitled to a decree compelling the directors to make calls upon the stock of subscribers, notwithstanding a clause in the statute declaring the shares of defaulters should be forfeited, the forfeiture being cumulative to all other remedies to which a

[1] 4 De. G. & J. 437.

[2] Buckley, 3rd Ed., p. 382; and cases there cited.

[3] 1 App. Cases, 39.

[4] *Sparks* v. *Liverpool Water Co.*, 13 Vesey 428.

[5] Dawes' Case, L. R. 6 Eq. 232.

[6] Clark's Case, 21 W. R. 429. The present Act makes no reference to a remission of forfeiture, and it is doubtful if such a remission could be sustained, except it were clearly shown to be in the interest of the Company.

[7] 7 Chy. 450; Robinson's Dig., 760.

creditor was entitled. And the same thing is intended by the present section which says that, notwithstanding such forfeiture, the holder of shares at the time of forfeiture shall continue liable *to the then creditors of the company* for the full amount unpaid on such shares at the time of forfeiture, etc. They would not, however, from the words just quoted, be liable to subsequent creditors nor to the company itself, and could not properly be proceeded against, for the amount unpaid on such forfeited shares, except as in the above case, where the assets of the company were insufficient to meet its liabilities.

12. Action for Calls.

56. The Company may, if they see fit, instead of declaring forfeited any share or shares, enforce payment of all calls and interest thereon, by action in any competent court; and in such action it shall not be necessary to set forth the special matter, but it shall be sufficient to declare that the defendant is a holder of one share or more, stating the number of shares, and is indebted in the sum of money to which the calls in arrear amount, in respect of one call or more upon one share or more, stating the number of calls and the amount of each, whereby an action hath accrued to the Company under this Act; and a certificate under their seal, and purporting to be signed by any officer of the Company, to the effect that the defendant is a shareholder, that such call or calls has or have been made, and that so much is due by him and unpaid thereon, shall be received as against the defendant in all courts as *prima facie* evidence to that effect.

(*a*) "*The company may.*"—The right of a company to sue for calls is the same as the right of any other person to sue on an unfulfilled contract; and had the company any legal status or existence independent of that given to it by special statute (either its own or the general Act) would be one appertaining to it (as to civil corporations) by the common law. But one of the greatest difficulties incorporated companies had to contend against, was that they had no means of enforcing calls from their members, and hence it has been considered expedient to declare in all the Acts relating to Joint Stock Companies, that companies formed in virtue of such Acts, have the power of enforcing calls by action "in any competent court," and for this purpose it is not necessary to set forth "the special matter," that is the

details as to how the company was formed or incorporated, or how the defendant became a member, or how, or for what purpose the call was made, or any other particulars with regard to it, but simply that the defendant is a shareholder and is in default to pay calls, amounting to so much, on so many shares, and in support thereof to produce a certificate of such facts, signed by any officer in the company. Such proceeding and certificate will entitle the company to judgment for the amount claimed, but of course there are many things which may be set up in bar of such judgment.

(*b*) *Plea of Compensation.*—Thus compensation may be pleaded to an action for calls in any cases in which it may be pleaded to an action for any other debt, either at common law or under the civil code of the Province of Quebec.[1] Thus an action for calls may be set-off *pro tanto* by a dividend due from the company. Or, if the company is indebted to the shareholder under a contract, or for any other matter in a sum which is due and payable at the time the action for calls is instituted.[2] It is, however, no defence to an action for calls that the company has not carried out a collateral contract made and entered into at the time the defendant subscribed for his shares.[3] And a contract between a corporation or its agents and a shareholder, by which the liability of the latter on calls is limited, is void both as to the creditors of the company and its assignee in bankruptcy.[4] And a stockholder who has participated or acquiesced in the action of corporate officers in making an assessment, as by voting for a by-law exacting or making payment of a call, with knowledge of the facts is estopped and cannot afterwards sustain the objection that the assessment was laid without due authority.[5] And

[1] But in a recent English Case, held that a contributory cannot set off a debt due him from a Company in voluntary liquidation against a claim for calls, whether made before or after the liquidation. *Brighton Arcade Co.* v. *Dowling*, L. R. 3; C. P. 175; 2 Leg. News, Mon., 88.

[2] *Vide supra*, p. 249.

[3] *West Cornwall Ry. Co.* v. *Mowatt*, 15 Q. B. 929; 19 L. J. 478.

[4] *Upton* v. *Trebilcock*, 91 U. S. 45, Su. Ct., 1875; Abb. Dig., Vol. II.

[5] *Macon, etc., R. R. Co.* v. *Vason*, 52 Ga. 314, Su. Ct., 1876; Abb. Dig., Vol. II.

so also voting as a stockholder at a preliminary meeting for the election of directors, was held to estop the voter from denying the validity of the subscription, where the proof was that, instead of signing the subscription book, he had by mistake written his name in a book containing a list of subscribers.[1]

Nor could such action be successfully resisted on the strength of a statement in the prospectus that no further calls were contemplated.[2] Nor on the ground that notice of the call had not been given to other shareholders.[3] Nor that the amount of stock prescribed by the company's special act had not been taken up previous to the call having been made.[4] Nor that the company had commenced business before the necessary amount of stock had been subscribed for.[5] Nor, as we have seen,[6] that the company has forfeited its charter, unless the forfeiture be first pronounced. Nor that a call is payable by instalments, and only one instalment is due.[7] And where a member sought to restrain a company from suing him at law on the ground that he was there precluded from showing that the directors had not been properly appointed, held, that the company need not prove the appointment of the directors who made the calls.[8]

And, in the United States, held, that it is no defence to an action for calls that the company have received subscriptions to a greater amount in the aggregate than was authorized.[9] Nor that the subscriber had not signed the articles of association, or authenticated his subscription in

[1] *St. Charles Manufacturing Co.* v. *Britton*, 2 Mo. App. 290, 1876; Abb. Dig., Vol. II.

[2] *Accidental and Marine Insurance Co.* v. *Davis*, 15 L. T. 182.

[3] *Shackleford, et al*, v. *Owen*, 37 L. J. 151.

[4] *East Gloucester Ry. Co.* v. *Bartholemew*, L. R. 3 Ex. 15; 37 L. J. Ex. 17.

[5] *Ornamental Wood Work Co.* v. *Brown*, 32 L. J. Ex. 190.

[6] *Windsor Hotel Co.* v. *Murphy*, *supra*, p. 294.

[7] Shelford, 2nd Ed., p. 145 and cases there cited.

[8] *Mangles* v. *Grand Collier Dock Co.*, 10 Sim. 519; 9 L. J. 177.

[9] *Oler* v. *Baltimore, etc., R. R. Co.*, 41 Md. 583; Abb. Dig., Vol. II.

the commissioners' book.[1] Nor that the directors had purchased from themselves, for the use of the corporation, property at an extravagant price for the use of the stockholders.[2] Nor that the corporation had failed to construct its works in the manner and within the time expected and stated when the subscription was procured. Nor the fact that the corporation had not executed its business at the place contemplated by the charter.[4]

And in the Province of Quebec, an agreement between the promoters and the defendant that the latter should pay for his stock in services, was held to be no answer to an action for calls.[5]

But a person sued for calls may plead anything which will show that his name is improperly on the register, and that he is not liable on the shares in question.[6] Or that the calls have been unequally made. In Nat. Ins. Co. *v.* Hatton,[7] for calls, the action was dismissed on the ground that the subscriptions of two shareholders had been reduced without just cause, after the defendant had subscribed, and the calls were therefore unequal. And a change in the amount of the capital stock of a corporation, from fifty to one hundred and fifty thousand dollars, after a subscription to the stock had been made, and without the assent or subsequent acquiescence of a subscriber, discharges him from all liability on account of his subscription; and the mere knowledge by him of the certificate of incorporation to which such subscription was annexed, he being at the time ignorant of the

[1] *Penninsular R. R. Co.* v. *Duncan*, 28 Mich. 130.

[2] *Dorris* v. *French*, 6 Thorp. 581; 4 Hur. 292.

[3] *First National Bank* v. *Hurford*, 29 Iowa 579, Su. Ct., 1870.

[4] *Courtwright* v. *Deeds*, 37 Iowa 503, Su. Ct., 1873.

[5] *National Ins. Co.* v. *Hatton*, in App. 24; L. C. J. 26.

[6] *Vide supra*, p. 294, and *post*.

[7] 2 Leg. News, 238. But, held in appeal that even if the shares of those who subscribed before the respondent, were reduced without his knowledge after he subscribed; yet, if he, after obtaining knowledge of that fact, did not immediately repudiate his stock, but on the contrary paid a first instalment thereon and took an active part both as solicitor and shareholder in promoting the affairs of the Company he would be liable to pay the calls on the stock held by him as they are made by the directors. 24 L. C. Jur. 26.

change thus made, cannot be considered as a new contract on his part, nor does it stop him from relying on this defence in an action upon the subscription.[1] And where persons associate for the purpose of forming a Joint Stock Company under the Statute of the State of Maine providing for the formation of such companies, and assess a member individually before incorporation, and incorporation is afterwards procured without the concurrence of such member, the company cannot inforce the assessment against him.[2] And in like manner where the defendant to an action for calls by the Windsor Hotel Co., of Montreal, pleaded that he never subscribed for stock in the "Windsor Hotel Co.," but in another Company called the "Royal Hotel Co.," and admitted his signature in a book in which the name "Windsor" had been substituted for "Royal" and the capital had been changed from $600,000 to $500,000, it was held that in default of proof by the plaintiff's that the alterations were made before the defendant signed the book, that the action could not be maintained.[3] But where to an action for calls, alleged to be due by defendant to the "Canada Car and Manufacturing Co.," defendant pleaded on equitable grounds, that he subscribed for the shares and became a shareholder in a company called the "Canada Car Co.," incorporated by letters patent, for certain specified purposes, and not otherwise; that afterwards, without the assent and against the will of defendant, that company applied to the Dominion Legislature and obtained an Act constituting the shareholders therein a body corporate under the name of the Canada Car and Manufacturing Co., the new plaintiffs; that by the said Act greater powers were conferred upon the plaintiffs than were possessed by the Canada Car Co., and the nature of the business was varied and extended, and the undertaking rendered more hazardous than was contemplated by the Canada Car Co., or the defendant when he became a shareholder thereof, and that defendant never

[1] *Hughes* v. *Antietam Manufacturing Co.*, 34 Md. 316 App., 1870; Abb. Dig., Vol. II.

[2] *Richmond, etc., Association* v. *Clarke*, 61 Me. 351, Su. Ct., 1873.

[3] *Windsor Hotel Co.* v. *Laframboise*, 1 Leg. News, Mon., 63, 1877.

agreed to become a shareholder of, or invest his money in a company possessing the powers of the plaintiff, whereby defendant is relieved from liability, it was held that the Act was binding on all the shareholders, whether assenting or not to the application for it, and that the Court had no jurisdiction to relieve the defendant from a liability which the statute expressly declared he should continue to be subject to.[1] The point, however, with reference to the change of name, seems to be covered by section 13[2] of the present Act, under which the rule would be that where the change was authorized by supplementary letters patent in the manner provided by the section preceding, that the change could not be set up as a defence to an action for calls. And so with regard to any other change in the constitution or charter of the company where the provisions of the Act have been complied with. And *in re* the *Stratford and Moreton R. R. Co.* v. *Stratton*,[3] it was held, that a shareholder was not estopped from disputing a call because he had joined in making it and had paid it in part. But where the defendant pleaded that he had been induced to take the shares by fraud, and had repudiated the contract within a reasonable time, held, that the plaintiff was entitled to particulars of the Acts of fraud and repudiation.[4]

13. Directors may be Indemnified.

57. Every Director of the Company, and his heirs, executors and administrators and estate and effects respectively may, with the consent of the Company, given at any general meeting thereof, from time to time, and at all times, be indemnified and saved harmless out of the funds of the Company, from and against all costs, charges and expenses whatsoever, which he shall or may sustain or incur in or about any action, suit or proceeding which shall be brought, commenced or prosecuted against him, for or in respect of any act, deed, matter or thing whatsoever, made, done or permitted by him, in or about the execution of the duties of his office; and

[1] *Canada Car and Manufacturing Co.* v. *Harris*, 24 C. P. 380; Robinson's Dig., 756.

[2] *Vide supra*, p. 146.

[3] 2 B. & Adol. 518; 9 L. J. 268.

[4] *McCreight* v. *Stevens*, 1 H. & C. 154.

also from and against all other costs, charges and expenses which he shall sustain or incur, in or about, or in relation to the affairs thereof, except such costs, charges or expenses as shall be occasioned by his own wilful neglect or default.

(a) "*Every Director,*" *etc.*—This section, as will be observed, is merely permissive. It prescribes or ordains nothing absolutely. Indeed it permits nothing but what would have been equally within the powers of the company without it. It cannot be regarded as creating any right which did not already exist. For if it can be assumed that a company has any rights arising necessarily from its incorporation, the right of indemnifying or holding harmless its officers or agents from the consequences of Acts done *bona fide* and *intra vires* on behalf of the company, may be safely assumed to be one of them, save always what ever may be shown to be fraudulent. The section appears to be peculiar to this Act. It is neither found in the English Acts nor in the other Canadian Acts. It is found, however, among some of the forms of companies' articles given by the English writers, showing that it is within the powers of the company to make by-laws to that effect without any question of special authorization under the statute.[1] 'As agents and trustees," says Lindley,[2] "directors are entitled to be indemnified by the company against all losses and expenses *bona fide* sustained and incurred by them in the exercise of the trust reposed in them." But if this right be expressly confined and limited by the articles of the company, it cannot be extended beyond the limit thus expressly set.[3] And if directors exceed their authority and thereby incur loss, such loss must be borne by them and not by the company, unless the company ratifies what they have done.[4] Directors are either agents or trustees, and in which character they have acted in anything they have done as directors, must be determined entirely by the nature of the transaction.

[1] Healey, Joint Stock Cos., p. 279.

[2] Lindley, Partnership, 3rd Ed., p. 780.

[3] *Selwyn* v. *Harrison*, J. & H. 334; *Gillan* v. *Morris n*, 1 De. G. & S. 421.

[4] Lindley, Partnership, 3rd Ed., p. 780, *et seq*.

(*b*) *Personal liability of Director.*—But this rule appears to have been uniformly observed that where they have exceeded their powers as agents, or violated their trust as trustees, they may be held personally liable. They act as agents in dealing with or entering into contracts with third persons on behalf of the company. They act as trustees in dealing with the property of the company; in the allotment of its shares; in the employment of its funds; in the payment of its dividends, etc.[1] In the former capacity they may be held personally liable to such third persons where they have exceeded their powers, or in any case in which by the law of principal and agent, the agent is thus responsible. Thus where four directors of a Joint Stock Company signed their names to a note, as follows:—"We, the directors of the Isle of Man State Co., limited, do promise to pay J. D. L. $1,600, with interest at six per cent. for value received." And at one corner of the note the company's seal was fixed with witnessed by L. L. Held that the directors were personally liable as makers of the note, for there was nothing in the note itself to exclude this personal liability; and the fact that the company's seal was affixed, was not sufficient to shew that the note was signed on behalf of the company.[2] And in the United States held that when individuals subscribe their proper names to a promissory note, *prima facie* they are personally liable, though they add a description of the character in which the note is given; but this presumption of liability may be rebutted, as between the original parties, by proof that the note was in fact given by the makers as agents of a corporation with the payee's knowledge.[3] Thus a note in the following words:—"Twelve months after date the president and directors of the H. B. T. Road Co. will pay L. T. $1,200, for value received, at six per cent. interest from date," was held the note of the corporation, and not the individual note of the president

[1] Buckley, 3rd Ed., p. 403.
[2] *Dutton* v. *Marsh*, L. R. 6 Q. B. 361.
[3] *McClellan* v. *Reynolds*, 49 Mo. 312; Abb. Dig., Vol. II

and directors whose names were attached thereto.[1] But be- an instrument in these words :—" Twelve months after date the president, by the order of the Board of the H. and B.'s Road Co., promised to pay M. C. $350, with six per cent. interest from date," was held to be the obligation of the president as an individual, and not of the corporation.[2] In both of these cases the judgment turned upon the intention of the parties as gathered from the writing. In the first place it was said no personal promise was used, but the persons signing stipulated that the president and directors would pay the amount, and as the corporation must be assumed to contract by its president and directors, it must be understood that the intention was to bind the corporation they represented and not themselves personally. In the latter case it was said that the board of directors, as such did not promise, and the recitals in the writing imply that it, the board, had funds in the hands of the president to pay the debt, and the writing was rather an acceptance of the order of the board to pay the amount. A somewhat similar case was one recently decided in the Province of Ontario. The charter of the Midland Railway Company gave them power to become parties to bills and notes, and enacted that any bill accepted by the president with the counter signature of the secretary, or any two of the directors, and under the authority of a majority of a quorum of the directors, should be binding on the company; and every bill accepted by the president, as such counter signatary, should be presumed to have been properly accepted for the company until the contrary be shown; the seals should be unnecessary, nor should the president, etc., so accepting any bill, be individually liable. A bill of exchange addressed "to the President Midland Railway Co." was accepted in these words :—" For the Midland Railway, of Canada, accepted H. Read, Secretary; Geo. Cox, President. Held (Cameron, J., diss.,) that defendant Cox, who was admitted to be president, was personally liable the bill not be-

[1] *Yowell* v. *Dodd, et al.*, Ct. of App., Ky., 527. Withrow's Corporation Cases.

[2] *Caphant* v. *Dodd, Ib*

ing drawn upon the company.[1] And where the defendant was sued in Upper Canada as a director of the Victoria Bridge Co. on an agreement headed "Memoranda of an agreement made and entered into this 23rd of March, 1854, between the directors of the Victoria Bridge Co., etc., of the first part, and J. J. (the plaintiff,) of the second, which was signed by the defendant, describing himself as "President of B." and the plaintiff, and it appeared that the company had been duly incorporated, and that the plaintiff had received £350 from them on account of work specified in the agreement, it was held that defendant was not personally liable.[2] But where, in consequence of arrangements for uniting the Grand Trunk Telegraph Co. with the British North American Association, the superintendent of the former company on the 19th Dec., 1854, wrote to its president and directors, expressing his readiness (in order not to embarrass the company in its operations,) to cease his connection with it on the 31st Dec., 1854, on the company guaranteeing to him his salary for six months from the first of January, 1855, and the president reported: "We are in receipt of your favor of this date, upon the subject of your retiring from the office you now hold under us. We will be happy to meet you in the way set forth, and we hereby pledge ourselves to carry out the provisions mentioned in your behalf. Signed, G. H. Cheney, president, on behalf of myself and the directors of the G. T. R. Co." It was held that the president's reply, amounted to a personal guarantee. And in like manner where plaintiffs sued defendants for breach of an agreement, by which defendants bound themselves to carry lumber for the plaintiffs from Peterboro to Port Hope, at a stipulated price. The agreement, which was dated Nov. 1865, set out that defendants were engaged in running the Port Hope, Lindsay & Beaverton R. R., and the Milbrook branch thereof. The jury were asked to find whether the agreement was made

[1] *Madden* v. *Cox, et al.*, U. C. 44 Q. B. 542.
[2] *Johnson* v. *Hamilton*, 13 Q. B. 211; Robinson's Dig. 763.
[3] *Boyd* v. *Cheney*, 5 C. P. 494; Robinson's Dig. 763.

by defendants, acting as agents for directors of the company of which plaintiffs had notice, and having found in the negative and assessed damages in favor of plaintiffs, the court refused to interfere with the verdict.[1]

In the latter capacity they may be held liable at the suit even of an individual shareholder for misuse of the trust reposed in them.[2] Thus where they had paid on behalf of the company a large sum to a bank, to induce it to open an account, they were held liable to make good the amount so paid.[3] And where directors, acting in excess of their powers, took, in the name of their company, a large number of shares in a new company to assist in bringing it out, they were held jointly and severally liable to make good the amounts paid on such shares.[4] And where the directors of a company which had made no profits, had, with the consent of the shareholders, paid interest on the shares out of the paid up capital. *Held*, on application by the liquidator that such payment was a misapplication of the money of the company and a breach of trust, and that the directors were jointly and severally liable to repay the whole sum so misapplied.[5] And where the members of a company which owned certain property and owed certain debts, formed a new corporation, which chose for its officers, the officers of the old corporation, and the persons owning the stock of the old corporation received in exchange therefor stock of the new, and the trustees then caused the property of the old corporation to be conveyed to the new, held, that the conveyance was a fraud upon the creditors of the old corporation.[6] And so in like manner it has been held that the managers and officers of a stock company are

[1] *McDougall, et al.*, v. *Court, et al.*, 18 C. P. 119; Robinson's Dig. 764.

[2] *Ibid*, p. 402; and Case of *Ferguson* v. *Wilson*, L. R. 2, Ch. 77; there cited. *Mussina* v. *Goldthwaite*, 34 Tex. 125, Su. Ct., 1870; Abb. Dig., Vol. II.

[3] Imperial Land Co. of Marseilles, L. R. 10, Eq. 298.

[4] *Joint Stock Discount Co.* v. *Brown*, L. R. 8, Eq. 381.

[5] *In re* National Funds Association Co., 27 W. R. 302; L. R. 10 Ch. D. 118; 48 L. J. 163.

[6] *San Francisco, etc., R. R. Co.* v. *Bee*, 48 Cal. 398, Su. Ct., 1874; Abb. Dig., Vol. II.

in truth, if not in form, trustees for its stockholders and creditors, and have no right to enter into any combination, the object of which is to divest the company of its property, and obtain it for themselves at a sacrifice.[1]

And so also where gross negligence or deceit may be shown, personal liability will attach. For the rule is as laid down in Gibbs' case,[2] that directors, as agents of the company, are bound to use the same amount of prudence which, in the same circumstances, they would exercise on their own behalf. And especially is this the case where the directors are paid to use diligence in the interests of the company.[3]

Thus in *Parker* v. *McQuesten*,[4] in Upper Canada, the plaintiff sued defendant as director of a bank, alleging in substance that in a report made to the shareholders in 1866, and a statement accompanying it, the defendant falsely and fraudulently misrepresented the condition of the bank, by over-estimating the assets and under-estimating the liabilities, thereby inducing plaintiff to believe it sound and to purchase stock. *Held*, that there was no evidence of fraud sufficient to maintain the action; but if the statements were false and fraudulent, the defendant would be liable, although they were made to the stockholders, for they were intended and used for public information. An important limitation however has just been placed upon this doctrine by the Court of Queen's Bench in England, in the case of *Wilson* v. *Lord Bury* and others,[5] in which the plaintiff entrusted his money to the Colonial Trusts Corporation, to be invested in real estate security.

[1] *Jackson* v. *Ludeling*, 21 Wall. 616, U. S. Su. Ct., 1874; Abb. Dig., Vol. II.

[2] *Re* Overend, Gurney & Co., L. R. 5, H. L. 480 and 4. Ch. 701.

[3] *Joint Stock Discount Co.* v. *Brown*, 8 Eq. 381, 396, and *Parker* v. *Lewis*, 28 L. T. 91. An unusually deep interest is now felt in these questions in the Province of Quebec, where the experiment is being made of holding bank directors personally liable for losses suffered by shareholders arising out of alleged mismanagement and neglect of duty.

[4] 32 Q. B. 273; Robinson's Dig. 764.

[5] Not yet officially reported.

This was done, and for several years he regularly received his interest on a mortgage of property in South Africa. Finally the company failed, and in the course of the liquidation, it appeared that the mortgage securing the plaintiff's loan, had been paid off a year before that event; but that the company, instead of paying over the money, or reinvesting it in securities of a similar character, had applied it to the general uses of the business, continuing the payment of interest, nevertheless, as if the money was secured as formerly. The plaintiff sued the three directors of the company who were present at the various board meetings in which the management of his money came under consideration. After consultation with his associates, the Lord Chief Justice directed the jury to find for the defendants for reasons best given in his own words—"The company," said his Lordship, "entered into agreement to invest Mr. Wilson's money, and they have taken that undertaking. The plaintiff's remedy is against the company, and the company alone. The directors are not responsible *apart from fraud*, except to the company, and fraud is not charged. All that is charged is negligence and breach of duty. The duty, however, of the directors, was to the company and not to Mr. Wilson. Mr. Wilson, as the investor, had no right to hold the directors liable for their alleged negligence, any more than has the customer of a tradesman to hold the manager or foreman personally liable to him when he has a remedy against the employer."

And where mere error of judgment is proved, they will not be held personally liable. This was the effect of the judgment in *Pickering* v. *Stephenson*,[1] and in a number of other leading cases. Thus, in Spering's Appeal,[2] in the United States Supreme Court, held, that, while responsible as such trustees for breach of trust, or loss from gross negligence in preventing fraud, they are not liable for mistakes of judgment, although so gross as to appear absurd, if honest and within

[1] L. R. 14, Eq. 322, 342.

[2] 71 Pa. 11, Su. Ct., 1872; Abb. Dig., Vol. II.

the scope of their powers, especially when acting under direction of legal counsel. Nor does the mere fact of being a director render the person liable for the frauds and misrepresentations of the active managers. Some knowledge and participation in the act claimed to be fraudulent must be brought home to the person charged. It is only where a director lends his name and influence to permit a fraud, or is guilty of some violation of law or other mismanagement, that he is personally liable.[1]

And in a number of other cases it was held that where the directors were still acting indiscreetly the court could not interfere, no matter how foolish their conduct might seem, unless it be shown that it is prompted by fraudulent and improper motives.[2] But if they are using their powers improperly—*i.e.*, from improper motives—they may be restrained.[3]

Thus, in the United States, held, that a corporation may be restrained by injunction from carrying its assets out of the State from which it derived its existence.[4] But an injunction will not lie to prevent the board of directors from merely allowing as correct a fraudulent account against the corporation.[5] Nor will an injunction be granted at the suit of a stockholder to restrain the general management of the corporate property, such as the mode of investing its surplus means, unless a clear violation of express law or a wide departure from charter powers is shewn.[6] But when an injunction is served upon an officer, the

[1] *Arthur* v. *Griswold*, 55 N. Y. 400, N. Y. Ct. of App., 1874; Abb. Dig., Vol. II.

[2] Buckley, 3rd Ed., p. 474, and cases there cited.

[3] *Cannon* v. *Trask*, L. R. 20 Eq. 669; and see *Kane* v. *Montreal Telegraph Company*, 20 L. C. Jur. 120.

[4] *Mathews* v. *Trustees*, 7 Phil. 270 C. P., 1869.

[5] *Rogers* v. *Lafayette Agricultural Works*, 52 Ind. 296, Su. Ct., 1875 Abb. Dig., Vol. II.

[6] *Buck* v. *Pacific Mail Steamship Co.*, 12 Abb. pr. N. S. 265, Su. Ct. N. Y., 1872.

person so served, or having knowledge, is bound to obey the injunction.[1]

But though a director may plead proper motives and good faith, it appears that he cannot plead ignorance so as to justify him in sanctioning an improper payment out of the funds of the company.[2] And in Turquand & Marshall,[3] it was said to be the duty of the directors to be acquainted with the proceedings of the board of which they are members, and they cannot therefore escape liability by professing ignorance of a state of affairs which they might have learned from the books of the company.

But this rule is not to be extended so far as to impute to a director knowledge of all the entries in the books of the company.[4] Nor are the directors liable for ranking bad debts as good unless they can be fixed with knowledge of the fact that they are bad; nor, in the absence of fraud, for improvidently advancing money to one of themselves.[5] And where the manager of a bank made advances to a company in which he was a shareholder, such transactions being in the ordinary course of the bank's business, and the manager had not exceeded his authority, it was held, that as no fraud was shown in the transactions, he could not be held liable for the advances.[6] But where a board of directors sanctioned the payment of money which had been expended in speculations in their own shares, the directors who attended the board were held liable to recoup the company.[7] And where loss was occasioned, first by continuing the business of a company without calling a meeting to consider the propriety of dissolving it, and by advances to

[1] *Hatch* v. *Chicago, Rock Island & Pacific R. R. Co.*, N. Y. C. C. 79. Withrow's Corporation Cases.

[2] *Land Credit Co. of Ireland* v. *Lord Fermoy*, L. R. 8, Eq. 7, 11.

[3] L. R. 6, Eq. 112, 130.

[4] Hallmark's Case, 38 L. T. 413, 660.

[5] *Turquand* v. *Marshall*, L. R. 4, Ch. 376.

[6] *Bank of Upper Canada* v. *Bradshaw*, L. R. 1 P. C. 479; and 17 L. C. R. 273.

[7] Shelford, 2nd Ed., p. 99; and see also case of Gloucester, etc., Ry. Co., there cited.

the directors, both of which were contrary to express provisions of the deed of settlement of the company, it was held that the directors who so neglected the provisions of the deed of settlement were liable in a suit, instituted by the official liquidator, to make good the loss.[1] Directors are also liable for the payment of a dividend on the strength of a false or fraudulent balance sheet, but not if the balance sheet be made in good faith.[2]

But where the directors of an incorporated company misappropriate the funds of the corporation, a bill against them and the company in respect of such misappropriation cannot be sustained by some of the stockholders on behalf of all except the directors; the company must be made plaintiffs whether the acts of the directors are void or only voidable, and the stockholders have a right to make use of the name of the company as plaintiffs in such proceedings.[3] And, in *Samuel* v. *Holladay*,[4] held, that, if a stockholder in a company know of a transaction by its officers or agents as illegal, he must, when he has notice that it is contemplated, insist upon his objection. He cannot stand by and see it done, and then complain to the prejudice of others involved in it.

Again, directors may be liable also in damages toward third persons on contracts which are *ultra vires* and where they have pretended to a power which they did not possess.[5]

Therefore, in considering the question of indemnity, (which is the subject of this section,) it is material to keep in view whether the action, which has been brought against them, is one to which they are personally liable or not. For if it is, it is evident that nothing less than the unanimous vote of all the shareholders would justify the com-

[1] Cox, Joint Stock Cos., 7th Ed., p. 40.

[2] Stringer's Case, L. R. 4, Ch. 475. But see further as to liability for dividends, *infra*.

[3] *Hamilton* v. *Desjardins Canal Co.*, 1 Chy. 1; Robinson's Dig. 765.

[4] C. C., U. S., Kansas, 139; Withrow's Corporation Cases.

[5] Shelford, 2nd Ed., p. 101, and *post*.

pany in using its funds to indemnify them. And there can be no doubt whatever that, if one shareholder objected to such a proceeding, he would be entitled to an injunction to restrain the payment. And, even if all consented, and such a payment could be shown to be in fraud of the creditors, as where the company was to be wound up, and its assets were insufficient to satisfy the demands against it, such a payment could undoubtedly be opposed or set aside.

But where directors have personally spent money in good faith for matters within their powers, belonging to the company, they are entitled to be indemnified, whether the money has been spent in the execution of contracts on behalf of the company, or in the defence of actions to which they were not personally liable. Thus, where two trustees of a joint stock trading company, at the request of the directors, gave a bond for a £1,000 lent to the company, and one of the trustees was sued, and paid the debt, with interest and costs, he was allowed to prove for these, but not for expenses incurred by him in raising the money.[1] But where certain trustees had the control of an expedition to explore land, on which to found a colony in accordance with resolutions of the company, the expense of which was not to exceed a certain sum, nor the subscription to be liable beyond that sum, but on the arrival of the trustees in the country in question, they were seized and thrown into prison, by which the whole project failed, and the loss greatly exceeded the amount fixed, it was held that the trustees could not call on the subscribers for more than the amount.[2]

(c) *Liability of Company generally.*—The liability of companies and corporations generally has, of late, been very much extended. Though at one time considered that an

[1] Oundle Brewery Co., *ex. p.* Croxton, 5 Del. & Sm. 432. In the Province of Quebec, where directors are sued personally, the proper course for them would be to call in the Company *en garantie*, and show that they are not personally liable.

[2] *Gillan* v. *Morrison*, 10 Y. & Son. 421.

action would not lie against a corporation except on a contract, express or implied, it is now well settled that they they may be liable, also, for frauds and wrongs, and in fact, in almost all cases in which an individual would be liable. This is the result of a large number both of English and American cases, so that the principle is no longer matter of dispute.[1] Thus, a corporation may be held liable for fraud, for trespass or for libel ;[2] and in an American case,[3] held, that a private corporation may be liable to an action for malicious prosecution, although technically incapable of malice.

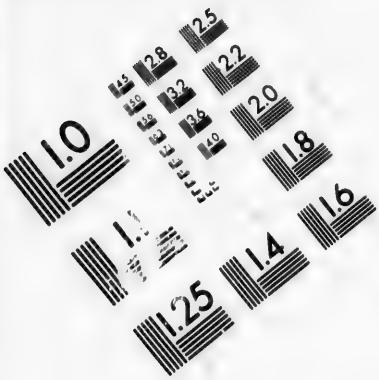
(*d*) *Liable for Acts of Agents.*—And this, whether the act complained of, be the work of the corporation itself, as in adopting a fraudulent report or statement, and ordering it to be published,[4] or be the work of their agents, acting within the scope of their powers.

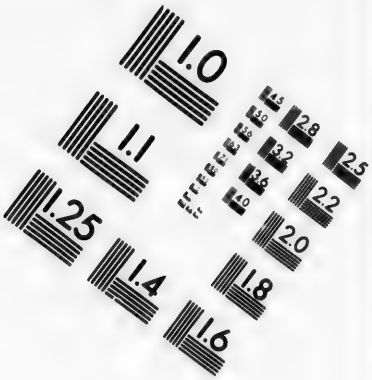
[1] Brice, *ultra vires*, 2nd Ed. 450 *et seq*; Angell & Ames, 382 *et seq*; Abb. Dig., Vol. II., 733.

[2] A Corporation may also be the subject of libel, and may maintain action therefor. But where an Insurance Company had procured a charter which authorized it to pay an interest of 30 per cent. to its stockholders before laying by a fund for the security of its policy holders, held that a publication cannot be considered libellous because it assumes that the Company will do for the profit of its stockholders that which it has obtained an express power to do, and because it argues that under such a charter a Company must necessarily be unworthy of public confidence. *Hahnemannian Life Ins. Co.* v. *Beebe*, Su. Ct., Ill. 420, Withrow's cases. If, however, the charter contains no authority to do that which is the subject of criticism, and the company do not propose to do its business in the method objected to, the publication may be libellous, *Ib.* But, the question whether a publication calculated to effect the stock in a banking Corporation and so to operate on its business reputation is libellous or not, cannot be determined by an examination of the assets and liabilities of the Corporation. The true test is to be found in the market value of the stock. *Brennan* v. *Tracy*, 2 Mo. app. 540, 1876, Abb. Dig., Vol. II. And in an action by a foreign Corporation for an alleged libel, it was held that the charter which was only brought before the Court as a part of the libellous publication was not properly pleaded. *Hahnemannian Life Insurance Co.* v. *Beebe*, Su. Ct., Ill 220. Neither would the usual formal declaration to the effect that the defendant falsely and maliciously wrote, published, etc., be sufficient in a case of this character. It is sufficient in an action by a natural person for words actionable in themselves, because the law presumes such person to be of good credit and character until the contrary is made to appear. But it cannot be presumed that the Legislature of a Foreign State has not granted an unwise charter to a Corporation, *Ib.*

[3] *Vance* v. *Erie R. R. Co.*, 32 N. J. L. 334 ; Su. Ct., 1867.

[4] As to effect of misrepresentation on stock subscriptions, *vide supra.*, p.p. 251, 268.





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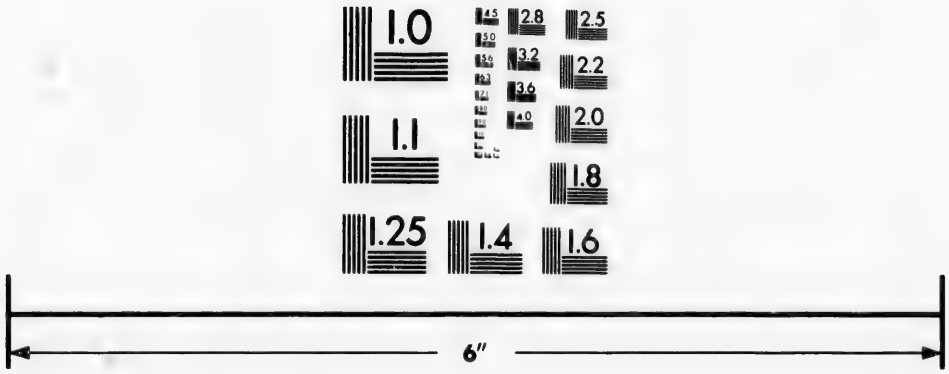

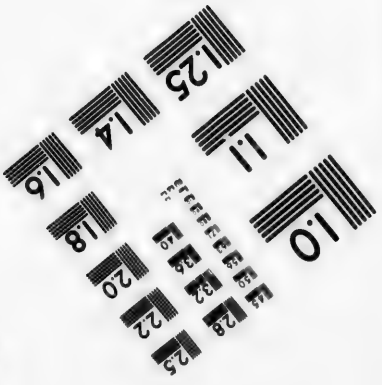

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But torts by an official which do not arise in some way from his duties, will not bind the corporation.[1] "Thus, the directors of a company made and published false reports as to its condition, and some time afterward, when, in fact, the reports were old, they were shown by its law agent to a person who, on the faith of the representations of the law agent, backed by the reports in question, became a subscriber to shares. It was held that these circumstances afforded no answer to an action for calls, since it was no part of the business of the law agent to induce persons to take shares in the company, or to make representations as to the affairs of the company."[2] And in a recent case in Upper Canada in which the agent was acting in the line of his duties, the Court of appeal was divided as to the liability of the company.[3] But this case involved a different question from the other, viz :—That the fraud was solely for the agents personal benefit, and not for that of the company; and in such case the weight of authority would appear to be against the liability of the company, on the contract raised by such fraud.[4] "If," says Brice,[5] "an

[1] Brice, *Ultra vires*, 2nd Ed. 464, 465; and cases there cited.

[2] 1 Am. Law Rev., N. S. 180.

[3] The agents of defendant at Chatham, a station on their line, having authority to grant bills of landing and shipping receipts, for goods to be forwarded by the railway from that station, issued such documents, representing certain flour to have been shipped by or received from B. & Co., and to be delivered to the plaintiff's at St. John, N. B. B. & Co., were a firm of millers at Chatham, of which defendants agent was a partner, and these bills of lading and receipts were fraudulently issued by him, on flour as having been received. Bills of lading drawn by B. & Co., on the plaintiffs and annexed to these bills of lading and receipts, were discounted by a bank at Chatham, and forwarded to the plaintiffs by whom they were accepted and retired. On action brought by them, it was held by Patterson, J. A., and Blake, V. C., that the defendants were liable, as under the circumstances they must be presumed to know the purposes for which such documents were intended to be used, and were estopped as against the plaintiffs who had acted on them from denying the representations contained therein; and by Moss, C. J. A., and Burton, J. A., that a principal is only liable for the tort of an agent, where the misrepresentation is made or other wrongful act is committed by the agent in the usual course of his employment or within the scope of his agency, *and for the* benefit of his principal, or where his principal has authorized, sanctioned or ratified it, *Erb., et al.* v. *Great Western Railway Co.*, 3 App. (Ont.) 446; appealed to Su. Ct.

[4] But *quære* whether the Company would not be liable in damages for holding him out as a person worthy of confidence on the principle of Quebec Civil Code, Art. 1056.

[5] 2nd Ed., p. 464.

agent has authority express or implied to do a particular act * * he has, incidental thereto, authority to do all such things and acts as are ordinarily done by principals themselves, or by the agents of private persons in and about analagous acts, including the commission of frauds and other torts, and the corporation will be bound thereby, *unless it can be shown either that the tort was the personal affair of the agent*, or that the other party had knowledge at the commission of the tort of the exact authority of the agent." And again, "what has been said with regard to fraud will apply with proper qualification to other torts."[1] And in another place the liability of corporations for the torts of their agents is subjected to the following limitation: "He, (the agent,) must have acted with *bona fides*, and believing and intending that he was carrying out his duties as agent." A very recent case, however. opposed to this principle, is that of *Swire* v. *Francis*,[2] which, though said to follow *Barwick* v. *English Joint Stock Bank*, differs from it in this respect, that the proceeds of the fraud were appropriated to the use of the agent himself, and the principal derived no benefit from it. That, however, though involving precisely the same question, is not a corporation case, nor does their appear to be any such case in which the principle was directly affirmed, that where the agent of a company commits a wilful and deliberate fraud for his own personal benefit, and without the knowledge or sanction of his principal, even though it be in the line of his accustomed duty on behalf of the company, that the company will be held liable.[3] And in *Maynard* v. *Firemen's Fund Insurance Company*,[4] in the United States, held, that

[1] Brice, 2nd Ed., p. 471.

[2] L. R. 3 App. 106; Evans Prin. and Agent, 472.

[3] See *Mitchell* v. *Crassweller*, in which the defendants were sued for damages caused by defendants servant in running over plaintiff and his wife, while using the horse on his own account, and without his masters knowledge, and in which Cresswell, J. remarked:—"If a servant in executing the order, express or implied of his master, does it in a negligent, improper and roundabout manner, the master may be liable. But here the man was doing something which he knew to be contrary to his duty, and a violation of the trust reposed in him. Evans, Prin. and Agent, 482.

[4] 34 Col. 48, Su. Ct., 1867, Abb. Dig., Vol. II.

there is a distinction between subordinate agents and the directors who, in their capacity as a board, are the controlling power in the corporation, so that the corporate body may be held liable for wrong, such as the publication of a libel ordered by the directors, when they might not be for the same done by subordinate agents. But a corporation knowingly employing incompetent or drunken servants may become liable for exemplary damages.[1] And this liability of corporations has been extended to include a liability to indictment for certain species of crime "which are in reality public torts, as for disobedience to an order of justices, requiring them to execute works pursuant to a statute; for misfeasance, for cutting through and obstructing a public highway; for non-repair of a highway and the like."[2] But whether this can ever be extended to felonies or misdemeanors, the essence of which is malice, is very doubtful.[3]

14.—Dividends.

58. The Company shall not make any dividend whereby their capital will be, in any degree, reduced.

The English Act leaves the question of dividends entirely to the regulations of the company. "The right," says Thring,[4] "of a shareholder to dividends is, of course, governed by the regulations of the company." It is so in effect by the present Act; that is to say, the right to, rate and time of payment, with all other questions incident thereto, are matters entirely within the company's control. The present section is for the protection of the creditors of the company, as is also section 67,[5] which is the comple-

[1] *Illinois Central R. R. Co.* v. *Hammer*, 72 Ill. 347, Su. Ct., 1874; Abb. Dig., Vol. II. But a corporation which gives out a work to be done by contract, retaining no control over the doing of it, is not liable to a laborer employed by the contractor, and injured by the fall of machinery used in the work. *Barrett* v. *Singer Manufacturing Co.*, 1 Sweeny 545, Su. Ct., 1869

[2] Brice, *ultra vires*, 2nd Ed., p. 482.

[3] *Ibid*, 483.

[4] 3rd Ed., p. 56.

[5] *Vide post.*

ment of the present one, and imposes a heavy liability upon directors who, in contravention of the present one, pay dividends out of that which belongs to the creditors.

The rule with regard to the rights of creditors in this respect was well stated in a case[1] in the United States Supreme Court, in which it was said that the property of a corporation is regarded as held in trust for the payment of its debts, and creditors may pursue it into the hands of all persons except those of *bona fide* purchasers; nor will a sale of the capital stock and a division of the proceeds among the stockholders defeat the rights of creditors, but such stockholders may be compelled to contribute *pro rata* to the payment of the corporate debts out of the moneys so received.

(*a*) *Nature of.*—For the term "dividend" really means and refers to that which is to be divided among the shareholders, and that only which properly belongs to and can be divided among the shareholders is the fund created by the net profits of the company. It is for this and this only they have invested in its shares, and if, contrary to their expectations, there are no profits, then they must wait until there are; or if there is no reasonable expectation of there being any, then the company should be wound up, and after the creditors have all been paid, they may divide the surplus assets among themselves. But having induced and obtained credit on the strength of the capital fund which they have contributed, it would be manifestly unjust to allow them to withdraw such capital or any part thereof, either by the name of dividends or any other name, as soon as they see that their expectations are not likely to be realized.

Thus, in *Pittsburgh, etc., R. R. Co.* v. *Alleghany County*,[2] it was held that payment of interest at regular intervals

[1] *Chicago, Rock Island & Pacific R. R. Co.* v. *Howard et. al.*, Su. Ct., U. S. 1. Withrow's Corporation cases.

[2] 63 Pa. St. 126, Su. Ct., 1869; Abb. Dig., Vol. II.

out of capital was within a charter provision prohibiting payment of dividends out of capital; and therefore an agreement by a corporation for the payment of interest or dividends on its capital stock without reference to its ability to pay them from the earnings of the company, is contrary to public policy and void.[1] And the guarantee of a dividend by a corporation means nothing more than a pledge upon the funds applicable to the purposes of a dividend; and if in any case it appear that the dividend has not been earned, the holders of stock upon which a dividend is guaranteed cannot recover in a suit to enforce payment of such dividend.[2] As long as the company is earning sufficient to pay a satisfactory dividend, there is no temptation to draw upon the capital for that purpose; but as soon as it falls below that, the interest of all, but especially of the large shareholders, create a strong temptation to pay bogus profits out of capital in order to maintain the credit of the company and the price of its shares. And it is this temptation, clearly, which has caused the Legislature to remove the question out of the domain of company regulation, and, by one short provision, make every payment of dividends out of anything but the actual profits of the company illegal.[3] The capital then belongs to and is the proper pledge of the creditors of the company, and the net profits only are all that the shareholder can claim until the company is wound up.

This rule seems to be so well recognized as to obtain everywhere. And so in *Chicago Rock Island and Pacific R. R. Co.* v. *Howard*,[4] it was said to be well settled that the stockholders of a corporation are not entitled to any share of the capital stock, nor to any dividend of the profits until all the debts of the corporation are paid.

[1] *Lockhart* v. *Vanalstyne*, 31 Mich. 76, Su. Ct., 1875; Abb. Dig., Vol. II.

[2] *Taft* v. *Hartford, etc., R. R. Co.*, 8 R. I. 310, 312, Su. Ct. 1866; Abb. Dig., Vol. II.

[3] The wording of the corresponding section or article of the company regulations attached to the Act of 1862 is, "No dividend shall be payable except out of the profits arising from the business of the company."

[4] Su. Ct. U. S., 1 Withrow's Corporation Cases.

(*b*) *What are profits.*—But in *Mills* v. *Northern Railway of Buenos Ayres Co*,[1] it was held that the profits of an undertaking are not such sum as may remain after the payment of every debt, but the excess of ordinary receipts over expenses ordinarily chargeable to revenue account; and also that where expenses properly chargeable to capital have been paid out of revenue, the company are justified in recouping the revenue account at a subsequent time out of capital. But, in a number of cases, held, that when directors order a dividend to any given amount, they impliedly declare to the world that the company has made profits, which justify such a dividend; and if no such profits have been made, but the directors have conspired to raise the market value of the shares by the publication of a fictitious dividend, to the injury of the public, that will amount to an indictable offence.[2] And in Rance's case,[3] it was said that even if a dividend be declared without a proper investigation of the financial position of the company, and no profit and loss account be prepared, but only an account of receipts and payments, making no allowance for risks, the burden is on the directors to show that the dividend was properly declared. The proper and legitimate way of arriving at a statement of profits is, says Buckley,[4] to take the facts as they stand, and after forming an estimate of the assets as they actually exist, to draw a balance so as to ascertain the result in the shape of profit or loss. If this be done fairly and honestly without any fraudulent intention or purpose of deceiving any one, it does not render the dividend fraudulent that there was not cash in hand to pay it, or that the company were even obliged to borrow money for that purpose, and the fact that an exaggerated value was put upon assets which were then in jeopardy, and were subsequently lost, does not render the balance sheet delusive and fraudu-

[1] L. R. 5, Ch. 621 and 631.

[2] Healey, p. 120; and cases there cited. The offence referred to is that of conspiracy.

[3] L. R. 6, Ch. 104.

[4] P. 414, following the decision in Stemfer's Case, L. R. 4; Ch. 475.

lent.[1] This case, which appears to be a leading one on the question of dividends, was that of a company formed for blockade running, where the articles provided that no dividends should be payable except out of the profits arising from the business of the company, etc., and it was decided that a dividend paid on a balance sheet, in which the ships engaged in the trade and other risks were *bona fide* estimated at the full nominal value, must be considered to have been paid out of profits, although the company had actually to borrow money to pay it.[2]

(c) *Profits of one year not liable for losses of previous years.*—Again the question has been raised under the English Act, as to whether dividends could be paid as long as capital lost in the business is unrestored. But, according to the company regulations already quoted,[3] it is not assumed at all that the dividends of one year can be made dependent upon losses of previous years; and certainly, by the language of the present section, no such thing is contemplated. The results of every year may be said to stand alone, so far as the right of the shareholders is concerned; and whether written off or not, lost capital has no claim to be recouped from the profits of future years. Thus, if a company, as the result of its first year's business makes a loss equal to five per cent. of its capital, and the next year makes a net profit of like amount, each shareholder will be entitled to withdraw his five per cent. in the

[1] Articles 79 and 80 of the schedule of regulations appended to the English Act, provides that once at least in every year the directors shall lay before the Company in general meeting, a statement of the income and expenditure, made up to a date not more than three months before such meeting, and that such statement shew arranged under the most convenient heads the amount of gross income, distinguishing the several sources from which it has been derived, and the amount of gross expenditure, distinguishing the expense of the establishment, salaries, and other like matters; every item of expenditure fairly chargeable against the years income shall be brought into account, so that a just balance of profit and loss may be laid before the meeting; and in cases where any item of expenditure may in fairness be distributed over several years has been incurred in any one year the whole amount of such item shall be stated, with the addition of the reasons, why a portion only of such item of expenditure is charged against the income of the year.

[2] Healey, Joint Stock Cos., p. 121.

Vide note supra.

shape of a dividend, without devoting it to the restoration of the previous year's loss. For the language of the section is that no dividend shall be paid, "whereby the capital will be in any degree reduced," and if a net profit, as the result of any year's business has been made, a dividend can be paid in proportion to such profit, no matter to what extent the capital may have suffered by previous losses.[1]

(*d*) *Dividend cannot be enforced till declared.*—But the declaration of dividends is part of the internal management of the company, which is governed in its ultimate arrangement by the will of a majority of the shareholders. And, therefore, it has been said that "till a dividend is declared, a shareholder has no legal title, nor even an equitable right thereto, which can be enforced by suit."[2] And in the United States, held, that in an action by a stockholder to recover a dividend, he must prove the making of a dividend and a demand therefor before suit.[3]

(*e*) *To whom they belong.*—A question may sometimes arise also as to the person to whom the dividend really belongs, as when a change takes place in the holding between the time of the declaration and the payment of the dividend.[4]

In *Wight* v. *Tucker*,[5] shares were settled on A. for life and then over. Held, that a dividend declared before A.'s death, but not payable till afterwards, belonged to A.'s estate. And where a testatrix died after a dividend was declared, but before it was payable, it was held to belong to her general estate.[6] And in *Bates* v. *McKinley*,[7] held that a dividend declared after the death of a testator, though not

[1] But where revenue has been applied to capital it may be recouped. *Supra.*

[2] Brice, *ultra vires*, 2nd Ed., 401.

[3] *Scott* v. *Central R. R. Co.*, 52 Barb. 45, Su. Ct., 1868; Abb. Dig., Vol. II.

[4] See as to effect of transmission by death, etc. *Supra*, p. 288.

[5] 1 J. & H. 266.

Legendre v. *Kent*, L. R. 4, Eq. 283.

31 L. J., Ch. 388.

out of profits made during his lifetime, belonged to the legatee. And in the case of a specific legacy of bank stock, it was said that if the testator had died a few days before the dividend day, the legatee would take the dividend, although payable in respect of profits earned during the life of the testator.[1] But the payment of a dividend to a person not authorized to receive it will not protect the company from paying it again to the true owner, and the statute of limitations will not begin to run against the latter until the time when he becomes aware of his right to claim the dividend.[2]

59. The directors may deduct from the dividends payable to any member all such sums of money as may be due from him to the company, on account of calls or otherwise.

(*p*) *Set-off of Dividends.*—This section is a corollary of section 45,[3] which gives to the company a hold or lien upon the shares of a member who is indebted to the company; and if on the shares, then on the dividends arising from the shares. This is in accordance also with the English regulations and practice, though not so declared by statute. Indeed, it has been said that the company has a natural lien on the shares for anything which may be due upon them, and so, of course, on the dividends. But there seems no good reason why it may not be affirmed out and out that the law of set-off or compensation applies as well to debts due to and from a company as to debts due to and from an individual. The company in its corporate character is an individual; while the individual shareholder, as between him and the company in which he holds shares, is as a third person, as one having an existence independent and rights independent of his character as a member of that company. His right to payment of a dividend accrued to him is one which he can, in the absence of any special bar,

[1] *Clive* v. *Clive*, 1 K. 600; 23 L. J., Ch. 681. See also for these cases Shelford, Joint Stock Cos., 2nd Ed., p. 157.

[2] *St. Romes* v. *Level Steam Cotton Press*, 20 La. Ann. 381, Su. Ct., 1868; Abb. Dig., Vol. II.

[3] *Vide supra*, p. 285.

enforce by law against the company; while, on the other hand, as we have seen,[1] the company has a right to the same process to enforce payment from him. Debts, therefore, equally due and payable on both sides, must extinguish each other *pro tanto*, according to the law of compensation, or set-off, as between private individuals. The section, therefore must be considered as declaratory merely of what the law is or should be on the subject.

67. If the Directors of the Company declare and pay any dividend when the Company is insolvent, or any dividend the payment of which renders the Company insolvent, or diminishes the capital stock thereof they shall be jointly and severally liable, as well to the Company as to the individual shareholders and creditors thereof, for all the debts of the Company then existing, and for all thereafter contracted during their continuance in office, respectively; but if any Director present when such dividend is declared do forthwith, or if any Director then absent do within twenty-four hours after he shall have become aware thereof and able so to do, enter on the minutes of the Board of Directors his protest against the same, and within eight days thereafter publish such protest in at least one newspaper published at, or as near as may be possible to, the office or chief place of business of the Company, such Director may thereby, and not otherwise, exonerate himself from such liability.

(*q*) *Liability of directors paying dividend.*—The liability imposed on directors by this section for contravention of section 58 is not a light one. It places in the hands, not only of the creditors, but also of the shareholders, a remedy for any loss they may have suffered, and any risk they may have incurred through such contravention. And it cannot be doubted that both the director who has paid, and the shareholder who has received, may be compelled to restore such moneys into the funds of the company for the benefit of the creditors. At least, such is the effect of section 165 of the English Act, under which it was held in Stringer's case, already referred to,[2] that an order may be made to compel a contributory or director to repay a dividend paid under a delusive or fraudulent balance sheet. And in Rance's case,

[1] *Vide supra*, p. 314.
[2] L. R. 4, Ch. 475.

also alluded to above,[1] it was held that a bonus credited to a director against payments due from him on calls is money paid to or retained by him within the section. In another case, the directors of a company who had paid no profits, had, with the consent of the shareholders, paid interest on the shares out of the paid-up capital. Held, on an application by the liquidator, under the Companies' Act, that such payment was a misapplication of the funds, and a breach of trust, and that the directors were jointly and severally liable to repay the whole sum so misapplied.[2] And in *Carpenter* v. *New York & New Haven R. Co.*,[3] it was held, that an action may be maintained by a stockholder in a moneyed corporation to enjoin the payment of a dividend, where the directors are about to misapply the funds of the corporation in paying such dividend, there being in fact no money earned for such a purpose.[4] In *Hill* v. *Frazier*,[5] it was held that a director of a manufacturing company, who assents to a dividend amounting to more than the profits, may be sued for such violation of duty, without joining with him the company as co-defendants.

In re the National Funds Assurance Co.,[6] an English case, directors of a company, pursuant to a resolution of shareholders, paid interest on the fully paid-up capital. This interest was, in fact, paid out of capital, there having been no profits of the business of the company; but such payments were, from time to time, approved of at the annual general meetings of the company. Held, that the directors had been guilty of misfeasance within section 165 of the companies' Act, 1862, and were personally liable to repay, not only the interest which they themselves had re-

[1] L. R. 6, Ch. 104.

[2] *In re* National Funds Assurance Co., 27 W. R. 302; L. R. 10, Ch. D. 118; 48 Law J. Rep. 163; 39 L. T. 420.

[3] 5 Abb., p. 277.

[4] As to procedure in such cases see *Kane* v. *Montreal Telegraph Co.*, 20 L. C. Jur. 120.

[5] 22 Penn. St. 320.

[6] 48 Law J. Rep. 163.

ceived, but the interest paid to the shareholders during the time they were respectively directors.

(*r*) *Preferential Dividends.*—The Act makes no provision concerning preferential shares; but where such are authorized, several questions may arise as to the respective rights of the ordinary and preference shareholder. These questions must be determined in a great measure by the authority under which the preference is created. For, while the term preference stock and preference shares is commonly understood to mean a right to be paid a certain rate of dividend, or a certain rate of interest in preference to the ordinary shareholders, this meaning may be modified by the authority creating them. One question which has arisen in connection with the subject, is whether the preference shareholders have a right to be paid out of all the available funds of the company, not only of the current year, but of any previous or subsequent year, to the exclusion of the ordinary shareholders. In the leading case on this point,[1] the question was decided in the affirmative, the Court holding that if the profits at any period of distribution were insufficient to meet the claims of the preference shareholders, they might indemnify themselves for their loss out of any subsequent profits, to the exclusion of the ordinary shareholder.[2] And this decision was followed in *Webb* v. *Earle*,[3] in which a company, having power so to do, issued preference capital, carrying a dividend of ten per cent. per annum, payable half-yearly, and with no words to restrict the preference shareholders to the profits of the current year; and it was held that if the profits of any one year were insufficient to pay the ten per cent. in full, the deficiency was, as between the preference and ordinary shareholders, to be made good out of subsequent profits.

(*i*) *Bonuses.*—Of the nature of dividends are what are called bonuses. And, indeed, in several cases, Kindersly,

[1] *Henry* v. *Great Northern Ry. Co.*, 1 De. G. & J. 606.
[2] Thring, 3rd Ed., p. 57.
[3] L. R. 20 Eq. 536.

V.C., held that certain payments called bonuses were really only dividends.[1] The same rules with regard to payment out of capital, set-off, etc., which have been above stated, in respect of dividends, will apply also to bonuses, or, indeed, to any other distribution of the funds of the company among the shareholders. But, in *Mills* v. *The Northern Ry. Co. of Buenos Ayres*,[2] it was held, that though the improper payment of a dividend will be restrained by injunction on a bill filed by a shareholder, a mere simple contract creditor cannot sustain such a bill on the ground that the fund for the payment of the debt is thereby diminished.

And in *Bloxham* v. *The Metropolitan Ry. Co.*,[3] held, that dividends may be paid out of debenture capital, though not out of share capital. But this must be distinguished from dividends ordinarily so called, being rather interest at a fixed rate, payable, at all events, on debentures which had been issued for the construction of works which had proved unproductive.

(*j*) *Right to.*—The defendant sold by auction, and the plaintiff bought shares in a company, on the 21st August. In accordance with the conditions of sale, the purchase was completed on the 29th of August. The ordinary half-yearly meeting of the shareholders was held, and a dividend declared on the 28th August. Held, that the plaintiff was entitled to the dividend.[4]

[1] *Plumb* v. *Nield*, 29 L. J. Ch. 618; and *Hallis* v. *Allan*, 12 Jur. N. S. 638.

[2] L. R. 5 Ch. 621.

[3] L. R. 3 Ch. 337, 350.

[4] *Black* v. *Homersham*, 27 W. R. 171; L. R. 4 Ex. D. 24; 48 Law J. Rep. 79; 39 L. T. 671.

CHAPTER VI.

OFFICES, OFFICERS, ETC.

1. Offices.
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   (c) *Service of Notices, etc.*
   (d) *Foreign Companies.*
   (e) *Constructive Notice.*
   (f) *Notices to Members.*
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14. Payment of Shares.
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17. Company may have Agencies.
18. Directors to Submit Statement.

1. Offices and Notices.

60. The Company shall, at all times, have an office in the city or town in which their chief place of business shall be, which shall be the legal domicile of the Company in Canada; and notice of the situation of that office and of any change therein shall be advertised in the *Canada Gazette*; and they may establish such other offices and agencies elsewhere in the Dominion of Canada, as they may deem expedient.

61. Any summons, notice, order, or other process or document required to be served upon the Company, may be served by leaving the same at the said office in the city or town in which their chief place of business may be, with any grown person in the employ of the Company, or on the President or Secretary of the Company, or by leaving the same at the domicile of either of them or with any grown person of his family or in

his employ; or if the Company have no known office or chief place of business, and have no known President or Secretary, then the Court may order such publication as it may deem requisite, to be made in the premises; and such publication shall be held to be due service upon the Company.

(*a*) *Head Office.*—The object of fixing and making public the place where the head office or legal domicile of the company is situated, is to determine the jurisdiction to which the company is amenable, and the place where service of any notice or legal process may be made. In other words, the main object of the provision is the protection of the creditors of the company. By section 4,[1] it is provided that the notice of application for letters patent shall indicate the chief place of business of the company, and this being copied into the letters patent themselves, afford a means to every one dealing with the company of obtaining such information in this respect as may, at any future time, be required in enforcing obligations which the company, in the course of such dealings, may have incurred. Under the English Act[2] a penalty not exceeding five pounds is imposed for every day which the company carries on business without having a registered office, as prescribed by the same section. The present Act, however, nor, indeed, any of the Canadian Acts, imposes a penalty; and although the section uses the strongest imperative, it would be difficult to say how it would be enforced, or what risk the company would run by disregarding it.

(*b*) *Agencies.*—The question of the right of the company to establish agencies outside of the jurisdiction by which it was incorporated has already been referred to.[3] The language of the present section, "and they may establish such other offices and agencies elsewhere *in the Dominion of Canada* as they may deem expedient," seems in the most undoubted manner to confirm what is there stated, that

[1] *Vide supra*, p. 102.
[2] Act (Imp.) 1862; sec. 32.
[3] *Vide supra*, p. 105.

except as provided by section 86,[1] "a company under the present Act cannot be empowered to establish agencies outside of the Dominion of Canada."

(*c*) *Service of Notices, etc.*—The service at the domicile of the president or secretary is an extension of the means of service not found in previous Acts. But when the service is at the office of the company it must be at the chief office; and, therefore, where the service was at the office of the manager of the company which was not the chief office of the company, it was held, that notwithstanding the operations of the company were carried on there, the service was insufficient.[2] And so, also, where the service was at the office of a person who did business for it, and in a different district from that in which the head office of the company was situated.[3] And where service was made upon the Grand Trunk Railway Company at one of its stations, it was held to be insufficient, and that the service should have been at its principal place of business.[4] But where service was accepted by a solicitor appointed for the purpose, on behalf of the company, it was held sufficient.[5] In a Lower Canada case, where the service in the absence of any discoverable officer, was made on "the last president" or "the late secretary," or on "the last secretary," it was held sufficient.[6] And so, also, in an English case, where the company had practically ceased to exist, and had no office or officers, it was ordered, that service of a bill, in a suit in which the company were defendants, on "the late deputy chairman and late secretary," should be good service.[7] But it is extremely doubtful whether these decisions would hold under the present section, which makes provision for service in such cases, by publication, as in the case

[1] *Vide post.*

[2] *Toupin* v. *The St. Francis Mine Co.* 5 Rev. Leg. 209.

[3] *Pattison* v. *The Mutual Ins. Co. of Stanstead & Sherbrooke*, 16 L. C. Jur. 25.

[4] *Legendre* v. *The Grand Trunk Ry. Co.* 6 L. C. R. 105.

[5] *In re* Regent United Service Stores, 8 Ch. Div. 75.

[6] *Booth* v. *The Montreal & Bytown Ry. Co.* 3 L. C. Jur. 196.

[7] *Gaskell* v. *Chambers*, 26 Beav. 252.

of absentees. In the United States the service of companies is regulated as herein, by special statutes. And where service was made on an agent of an insurance company sent to solicit risks, it was held bad.[1]

(*d*) *Foreign Companies.*—The section, however, makes no provision for the service of foreign companies, and it becomes necessary to see what the practice is in this regard. Reasoning from the ruling in the English cases, it is said by an English writer,[2] that "a company capable of being wound up under the Act, may be served at their principal place of business in this country; and by reference to another case, it is pointed out that a company may be wound up under the Act, although all its operations are in a foreign country, "if the management be in this country, and the business be substantially transacted here."[3] And in another case,[4] an order was made to wind up a company incorporated by registration in India, with but a branch office and manager in England. These cases, perhaps, are not strictly applicable, the companies concerned having there business registered in England, under a provision of the Act that enables them to do so; but a much more pointed dictum was that delivered in *Carron Iron Co.* v. *Maclaren*,[5] in which it was said, "a foreign company, resident in England, is considered resident in this country, for the purpose of being served with notice of legal proceedings.

In the United States, service cannot be made on the agent or agency of a foreign company, except so provided by special statute, and in *Nash* v. *Rector*,[6] it was held that service could not be made on the officer of a foreign corporation, merely because he is found within the jurisdiction

[1] *Libling* v. *Kansas, etc., Ins. Co.*, 82 Pa. St. 413, Su. Ct. 1876.
[2] Buckley, 3rd Ed., 474.
[3] *Ibid*, p. 172.
[4] Commercial Bank of India, L. R. 6 Eq. 517.
[5] 5 H. L. 416; and see Shelford, Joint Stock Cos., 2nd Ed., p. 411.
[6] Cited in Angell & Ames' Corporations, sec. 637.

of the state.[1] The reason of this is that a corporation has no existence outside of its own jurisdiction, and cannot be legally summoned anywhere else, not even by representation. "But if a statute enacts that process in a suit against a foreign corporation may be served on its agent residing in the state, a judgment obtained on such process is binding on the corporation, and entitled to the same credit in the state where it exists as in the state where rendered."[2] The difficulty is now pretty generally provided for by special statute in the different States of the Union.

The practice in this country, however, following, apparently, that of the English courts, which is based on expediency rather than strict law, has been to allow service on agencies of foreign companies. Thus, in *Chapman* v. *Clarke and the Unity Life Assurance Association*,[3] garnishees wherein the garnishee was a foreign corporation, having its principal place of business and head office in England, but its chief agency in Montreal, and the service was made at the agency in Montreal, where the writ of summons issued, the service, on contestation, was held good. And in *McPherson, et. al.*, v. *The St. Lawrence & Inland Marine Insurance Co.*,[4] which was an action on an insurance policy issued in Upper Canada, where the chief office and place of business of the company was situated, and service was made on the agent at Montreal, the service was held insufficient, but on the ground that the agent was not in

[1] *Ibid*—Note from *Lafayette Ins. Co.* v. *French*, 5 McLean C. C. 461.

[2] By an Act of the State of California for instance it is provided that—"Every corporation heretofore created by the laws of any other State and doing business in this State shall within one hundred and twenty days after the passage of this Act, and any corporation hereafter created and doing business in this State within sixty days from the time of commencing to do business in this State, designate some person residing in the county in which the principal place of business of said corporation in this State is, upon whom process issued by authority or under any law of this State may be served; and within the time aforesaid shall file such designation in the office of the Secretary of State; and a copy of such designation duly certified by said officer shall be evidence of such appointment, and it shall be lawful to serve on such person so designated any process issued as aforesaid." Proffatt, Corporations, p. 99.

[3] 3 L. C. Jur. 159.

[4] 5 L. C. R. 403.

charge of an office of the company for the transaction of business generally. And in the United States two very interesting cases of garnishment were decided, which seem to be in point. In the one it was held that an officer of a corporation may be garnisheed for money or property of the company in his hands ;[1] and in the other, that process of garnishment could be sent to any county in the state where the garnishee could be found, there being no difference in this respect between natural persons and corporations.[2] But in *Bank of British North America* v. *Langhrey*,[3] in Upper Canada, it was held, that a debt due by a corporation having its head office in England, cannot be attached by service of the attaching order upon an agent of the corporation in Upper Canada. But in *Campbell* v. *The National Life Insurance Co.*,[4] it was held, that the general agents in Canada of a foreign company, must be regarded in the same light as the general agents at the head office in the foreign country.

(*e*) *Constructive notice.*—The point on which many of these questions turn is, whether the person receiving notice is an agent for that purpose or not. In the case of an ordinary director, and even of an acting director, the rule is that he is.[5] Though this rule may be affected by circumstances. Thus a director of a bank, who was also a member of a firm, procured at the bank the discount of a note belonging to the firm, but not himself acting in making the discount. The note had been obtained from the maker by fraud, to the directors knowledge, but he did not communicate that fact to the bank. Held that his knowledge was not constructive notice to the bank.[6] "On the other hand a mere verbal, and it would seem even casual, notification to the directors or

[1] *Everdell* v. *Sheboygan, etc., R. R. Co.*, 41 Wis. 395, Su. Ct., Wis., 1877.

[2] *Toledo, etc., R. R. Co.* v. *Reynolds*, 72 Ill. 487, Su. Ct., 1874 ; Abb. Dig., Vol. II.

[3] 2 L. J. N. S. 44 ; Robinson's Dig. 781 ; and *Lundy* v. *Dickson*, 6 L. J. 92, *Ibid.*

[4] 24 C. P. 133 ; *Ibid.*

[5] Brice, *ultra vires*, 2nd Ed., p. 612.

[6] *First National Bank of Highstown* v. *Christopher*, 29 Am. Rep. 262.

other responsible agents of a corporation, provided only that it be during the actual course of business, is sufficient."[1] "But corporations having common officials are not necessarily affected through these with knowledge of each others transactions. Thus where company A. borrowed of company B., on the security of a mortgage, money that was to be devoted to a purpose that was *ultra vires* of company A., and the person who negociated the loan was a director in both companies, it was nevertheless held that company B. was not affected with notice of the illegality."[2]

63. Notice requiring to be served by the Company upon the members, may be served either personally or by sending them through the post, in registered letters, addressed to the members at their places of abode as appearing on the books of the Company.

64. A notice or other document served by post by the Company on a member, shall be taken as served at the time when the registered letter containing it would be delivered in the ordinary course of post; to prove the fact and time of service it shall be sufficient to prove that such letter was properly addressed and registered, and was put into the post office and the time when it was put in, and the time requisite for its delivery in the ordinary course of post.

(*f*) *Notices to members.*—The notices here referred to are notices of allotment,[3] of meetings,[4] of calls,[5] of forfeiture,[6] etc., all of which have been referred to in connection with those subjects. It may be said, in addition, however, that the system here provided is the same as that which prevails in Great Britain, under the Act of 1862, if not by the Act itself, by the articles for a trading association which accompany the Act.

II.—Powers of Officers.

2. Any summons, notice, order or proceeding requiring authentication by the Company may be signed by any Director, manager, or other author-

[1] Brice *ultra vires*, 2nd Ed., 613.
[2] *Ibid*, p. 614.
[3] *Vide supra*, p. 242.
[4] *Vide supra*, p. 184.
[5] *Vide supra*, p. 306.
[6] *Vide supra*, p. 309.

ized officer of the Company, and need not be under the common seal of the Company; and the same may be in writing or in print, or partly in writing and partly in print.

65. Every deed which any person, lawfully empowered in that behalf by the Company as their attorney, signs on behalf of the Company, and seals with his seal, shall be binding on the Company and have the same effect as if it was under the common seal of the Company.

66. Every contract, agreeement, engagement or bargain made, and every bill of exchange drawn, accepted or endorsed, and every promissory note and cheque made, drawn or endorsed on behalf of the Company, by by any agent, officer or servant of the Company, in general accordance with his powers as such under the by-laws of the Company, shall be binding upon the Company; and in no case shall it be necessary to have the seal of the Company affixed to any such contract, agreement, engagement, bargain, bill of exchange, promissory note or cheque, or to prove that the same was made, drawn, accepted or endorsed, as the case may be, in pursuance of any by-law or special vote or order; nor shall the party so acting as agent, officer or servant in the Company be thereby subjected individually to any liability whatsoever to any third party therefor. Provided always, that nothing in this Act shall be construed to authorize the Company to issue any note payable to the bearer thereof, or any promissory note intended to be circulated as money, or as the note of a bank, or to engage in the business of banking or insurance.

The first of these sections is identical with section 64 of the Act (English) of 1862, from which it is apparently taken, but is new to Canadian Legislation, being found neither in the Act of 1869, or the Companies' Clauses Act of that year, or the present Quebec Act. The three sections may be regarded as the complement of section 32, and raise a number of important points as to the powers of the officers and agents of the company, the making of contracts, the use of the seal, etc., which may be referred to in the following order :—

1. The appointment of officers.
2. Their powers to bind the company.
3. The use of a seal.

(*a*) *Of directors.*—As we have seen, the directors as agents have general powers, such as are indicated in sec-

tion 32,[1] and which they exercise by vote of a quorum about the business of the company. But, besides these, there must be subordinate agents to carry out the business decided upon by the directors as necessary to be done, and whose acts are purely of an executive character. These are they designated in the first of the above sections by the words directors, manager *or other authorized officer of the company*.

(*b*) *Of subordinate agents.*—The question then is, what is a sufficient authorization for the acts indicated in these three sections? It is plain that if every person having an interest in or connection with the company could incur obligations *suo motu* on behalf of the company, that its business would soon fall into hopeless confusion, and it would find itself with more liabilities on its hand than it could ever hope to discharge. The authority, then, to order work to be done, to buy and sell, to sign or endorse promissory notes, and enter into contracts generally, must be confined to a few. Who these are and how they are to be appointed is generally determined by the charter and by-laws of the company. When such rules exist, they must be conformed to, and it may safely be asserted in general terms, that whatever is undertaken by a person assuming to act on behalf of the company, and who has not been appointed in conformity with such rules, will be void. It is said, however,[2] that if the appointment is by election, that an agent may validly act under colour of election, though his election be informal and on other grounds void. "Indeed, it seems to be clear law," says the same authority, following a number of English cases, "that the act of an officer *de facto* is good whenever it concerns a third person who had a previous right to the act, or had paid a valuable consideration for it, and this whether the act concerns the preservation of the corporation or not."

[1] *Vide supra*, p. 200.

[2] Angell & Ames, Corporations; sec 286.

(c) *Appointment of.*—Where there are no special rules, agents and officers of companies may be appointed under the seal of the company, but the necessity of a seal seems now to be entirely dispensed with.[1] Even a writing of any kind is unnecessary in order to confer authority to act, and a sufficient guarantee of their authority, as far as concerns third persons, will be that they have been recognized by the company in that capacity. And when so recognized, they have "all the authority which either is given them expressly by their principals, or raised by implication from the nature of their appointment and consequential duties."[2]

And an appointment by a *de facto* board of directors has the same effect as if made by the regular legal board.[3] Indeed, if an officer of a corporation is continually suffered to exercise general authority in the corporate business, the corporation may become bound by his acts, within the scope of the power so assumed, in the same manner as if authority had been expressly granted.[4] And the official character of persons who act as the officers of a corporation may be proved by parol, without producing the records of the corporation.[5] But persons dealing with such officers are charged with knowledge of the extent of authority conferred upon them, and of the limitation and restrictions upon it contained in the charter and by-laws.[6] And the burden of proof is upon them to show that debts contracted by such officers are debts of the corporation.[7] But an officer of a corporation cannot vote on behalf of the corporation in matters in which it is interested, unless specially authorized. This was held in the matter of one Payard, in the Insolvent Court, Montreal. A petition was presented in the Insol-

[1] *Vide post.*

[2] Brice, *ultra vires*, p. 617.

[3] *Ellis* v. *North Carolina Institution*, 68 N. C. 423, Su. Ct., 1873; Abb. Dig., Vol. II.

[4] *Union, etc., Mining Co.* v. *Rocky Mountain, etc., Bank*, 2 Col. 248, Su. Ct., 1873; Abb. Dig., Vol. II.

[5] *Pusey* v. *N. J., etc., R. R. Co.*, 14 Abb. N. S. 434.

[6] *Adriance* v. *Rome*, 52 Barb. 399, Su. Ct., 1868.

[7] *Dabury* v. *Stevens*, 2 Sweeney 415 N. Y., Su. Ct., 1870; Abb. Dig., Vol. II.

vent Court by the contesting assignee asking that he be appointed, as he held a majority of votes in value, the number of voters being equally divided. Papineau, J., rejected the petition, *en defaut de forme*. The secretary or any officer of an incorporated body had no right to vote on the claim of that body, unless a special resolution was passed by the board of directors authorizing him to do so, which was not done in this case; nor had the president the right to sign a power of attorney to the secretary to vote, as was done in this case, without similar authority from the board; and neither of these formalities having been complied with, the petition was rejected.

If the authority is given for a prescribed term, it ceases, of course, with the expiration of that term; or, if in fulfilment of a special purpose, when the work or purpose is accomplished. And in *Soldiers' Orphans' Home* v. *Shaffer*,[1] held, that a corporation which has engaged a servant for a specified term, cannot discharge him without cause, in virtue of a general power to remove employees at pleasure conferred by the charter. If undefined, the authority continues till revoked.[2] It never expires with and on account of the removal of the board which elected or appointed him, a fact which would seem to derogate from the statement that the directors are the only "primary agents"[3] of the company, and that subordinate officials are not the direct agents of the company, but the agents merely of the directors. The better opinion would seem to be that the officers and servants of a company are not sub-agents in the usual sense of the term. It is true that they are subordinate to and under the control of the directors, but it does not follow that every subordinate officer is a sub-agent. Thus, the manager of a manufacturing establishment may have power to employ 'hands' to work in the establishment, but his doing so is a purely ministerial act; and when employed,

[1] 63 Ill. 243, Su. Ct., 1872. But in *Hunter* v. *Sun Mutual Ins. Co.*, held that an officer of a Company is presumed to know its by-laws in so far as they govern his tenure of office; 26 La. Ann. 13, Su. Ct., 1872.

[2] Angell & Ames, Corporations; sec. 288.

[3] Brice, *Ultra vires*, p. 589.

such persons become directly the employees and *agents* of the principal, whoever he may be, who alone is responsible for their remuneration, and liable for their wrong doing or default. They are not in any sense substitutes of the manager or delegates of his authority. He is not supposed to do the work they are employed to do, nor they his. And with company servants, the case would seem to be still stronger. There, the directors, who are said to be "primary agents," are in fact but one agent or managerial authority. Their duty is not to execute, but to order; and that they can accomplish, not as individuals, but as a board—as the visible representative of the whole corporate body; or, as suggested by the same authority,[1] a corporate body themselves, rather than simply agents of one. And when they have, with reasonable care and diligence, appointed or elected those who are actually to do the work of the company, they are no longer responsible for them, or liable, individually, for their default.[2] A good deal of difficulty, if not confusion, seems to have arisen from the peculiarity of the position occupied by a board of directors; a difficulty which seems to have been the cause of the statement in another authority,[3] which says:—"The mere fact that an agent[4] is, *in some respects*, the deputy of annual officers,[5] by no means proves that he is an annual officer himself." It would seem, therefore, that subordinate officials must be regarded as the direct agents of the corporation or company, and not of the directors, and, therefore, in no way affected by changes in or removal of the latter.

(*d*) *Power to bind the company.*—The rule with regard to the power of such officials to bind the company by their acts is every day becoming broader and more easily understood. It is the general rule of agency with regard to persons serving in a similar capacity, or performing similar

[1] *Ibid*, p. 565.

[2] But by special provision of the Act they are made liable individually to the employees under certain circumstances. *Vide*, sec. 69.

[3] Angell & Ames, sec. 290.

[4] *i. e.*, a Company official.

[5] That is, directors.

acts for others who are termed principals. Subordinate officials of corporations, therefore, are said to have "all the authority which either is given them expressly by their principals, or raised by implication from the nature of their appointment and consequential duties."[1]

In *Smith* v. *Hull Glass Co.*,[2] Maule, J., said:—"The case differs in no respect from the ordinary one of dealing at a shop or counting house; the customer is not called upon to prove the character or the authority of the shopman or clerk with whom he deals; if he is acting without or contrary to the authority conferred upon him, that is their fault." Where the authority is express, of course, no difficulty need occur; but where it is an implied authority, it will be a matter for the decision of the Court, or jury, as the case may be, whether the circumstances in question bring it within the reasonable construction of that term. "Thus, where a traffic manager of a railway company entered into an agreement for the sale of lands on behalf of the company, the company was held bound by the agreement, because they had been in the habit of recognizing such agreements entered into by him."[3] But this judgment, though confirmed in appeal,[4] was confirmed on the ground of part performance, Turner, S. J., remarking that, in his opinion, there was not sufficient evidence of authority; and that, if the manager had, in a few instances, made contracts for the sale of lands, it would not be sufficient to establish a general authority in all cases. Nor has the president any power merely as president to give a confession of judgment.[5] But it cannot be objected by a corporation that an assignment of a note by its president was without authority, the proof showing that, by a resolution of the board of directors adopted prior to the assignment,

[1] Brice, *Ultra vires*, p. 617.

[2] 11 C. B. 897-928.

Wilson v. *West Hartlepool Ry. Co.*, 34 Beav. 187; and Shelford, Joint Stock Cos., 2nd Ed., p. 50.

D. J. & S. 475.

[5] *Thew* v. *Porcelain Manufacturing Co.*, 5 S. C. 415, Su. Ct., 1874; Abb. Dig., Vol. II.

the president was authorized to pay off any debts owing by the company in any securities or other property of the corporation, and there being no evidence that it was assigned by him for any other purpose than that authorized in such resolution.[1] For a corporation may, unless otherwise provided by its charter, by resolution or by-law, appoint any person an agent for the purpose of transferring or disposing of its property or negotiable securities. And such power may be inferred, if the proof shows that the president is in the habit of exercising it. For the doctrine seems to be well settled that the president of a corporate body may perform all acts which are incidental to the execution of the trust reposed in him, such as custom or necessity has imposed upon the office, and that without express authority; and it is immaterial whether such authority exists by virtue of his office, or is imposed by the course of the business of the company.[2] And, in a case where the general freight and passenger agent of defendant had authority to sign contracts of shipment, and his name was signed to a particular contract by the clerk in his office, the execution of new contracts being a part of his duties, it was held that defendants were liable.[3] But where the by-laws of a corporation authorized the president to endorse promissory notes, and a note was endorsed by the secretary, without the knowledge of the corporation, to a person who was at the time a director, and charged with knowledge of the provisions of the by-law; held, that the endorsement passed no title.[4] And, in New Brunswick, where the Tobique Mill Company authorized their agent, by power of attorney, "to manufacture logs into lumber at the mills, transport them to market, and dispose of them" for the company's benefit, it was held that this did not authorize the agent to deliver over lumber at the mills in payment of securities given by him on behalf of the company, for debts contracted in the

[1] *Mitchell* v. *Deeds*, Su. Ct., Ill. 461.

[2] *Ibid*, Withrow's Corporation Cases.

[3] *Newall* v. *Smith*, 49 W. 255 Su. Ct., 1877; Abb. Dig., Vol. II.

[4] *Leavitt, et. al.*, v. *The Conn. Peat Co.*, C. C. Conn. 113; Withrow's Corporation Cases.

course of his agency, and that such delivery vested no property in the creditor.[1] In another case, a secretary and financial agent of a company, having authority to get bills discounted, forged bills, and got them discounted. He paid the proceeds into a bank to the account of a firm to which he belonged, and, in his character of a member of that firm, drew cheques on the account in favour of the company; and it was alleged that, out of the amount so drawn, he actually made payment for the benefit of the company. The bill discounter had not negotiated the bills. In the winding up of the company, the discounter asked for an inquiry, what amount of the proceeds of the bills had thus reached the company, and asked to claim for the amount when ascertained. Demand granted accordingly.[2] In this country, the doctrine of implied authority is illustrated by a number of cases, some of which have been already referred to.[3]

To avoid personal liability on such contracts, the agent must observe that they are entered into in the manner prescribed by the charter and rules of the company, if such provision be made. But it is not necessary that he keep minutes of such transactions,[4] although it is customary for *boards* of directors or agents to do so, in order to furnish a record of their proceedings. The proper mode in which an agent should contract in order to bind the company in matters of simple contract is to name the company in the body thereof, and to sign as agent, or whatever the capacity may be; "and this is the mode in which contracts of insurance and bills and notes are ordinarily executed."[5] In any other way, there is always room for doubt and dispute, a fact which might be amply illustrated; but as it is a matter which concerns more

[1] *Lombard* v. *Wilson*, 1 Kerr 327; Stevens' N. B. Dig. 335.

[2] *The Japanese Curtains* v. *Pat. Fabric Co.*, Exp. Shoolbred 28 W. . 339.

[3] *Vide supra*, p. 143, 203.

[4] Angell v. Ames, Corporations; sec. 291.

[5] *Ibid*, sec. 293.

particularly the general law of agency, it is needless to enter into it here.

With regard also to contracts made by officials in favour of the company, it would appear that such contracts may inure to the company, though really made in favour of such official. Thus, in *McBroom* v. *Lebanon*,[1] it was said that a note made payable to the treasurer of a corporation, without giving the name of the treasurer, is, in fact, payable to the corporation, and shows that the corporation is the party in interest, and a suit on such note is properly brought in the name of the corporation.

(*e*) *Necessity of seal.*—The old idea of the necessity of evidencing every appointment of a servant or agent, or every contract into which a company enters by instrument under seal, has long been departed from, and the departure is recognized and ratified in these sections. Indeed, so far from requiring every such appointment, authority, or contract to be under seal at the present day, the rule is, and is recognized by law, that in a large number of cases such appointments are made without any writing at all. "The general rule is," says Story,[2] "that an agent or attorney may ordinarily be appointed by parol, in the broad sense of that term, at the common law; that is by a verbal declaration in writing, not under seal, or by acts and implications." And, in another place,[3] "As the appointment of an agent may not always be evidenced by the written vote of such functionaries (*i. e.* the directors) it is now the settled doctrine, at least in America, that it may be inferred or implied from the adoption and recognition of the acts of the agents by such functionaries, or by the corporation. Thus, for example, if the cashier of a bank should openly act as such in all the common transactions of the bank, with the full knowledge and assent of the directors, his acts would be obligatory upon the bank, although there might be no written vote on record to establish his appointment."

[1] 31 Ind. 268, Su. Ct., 1869; Abb. Dig., Vol. II.
[2] Story Agency, 6th Ed., p. 42.
[3] *Ibid*, p. 49.

And a corporation which suffers appearances to exist, and its officers and agents to so act as to give one employed by such officers and agents, reason to believe that he is employed by the company, becomes liable to such person as his employer, to pay for the services rendered by him.[1]

"In America," says Story,[2] "the general doctrine is firmly established, that whenever a corporation is acting within the scope of the legitimate purposes of its institution, all parol contracts made by its authorized agents raise an implied promise for the enforcement of which an action will lie against the corporation. And in *Racine & Miss. R. R. Co.* v. *Farmers' Trust & Loan Co.*, it was held that a corporation acting within the scope of its authority is bound by the parol contract of its authorized agent the same as an individual under like circumstances.[3] And in *McCullough* v. *Taladega Ins. Co.*,[4] held that where by the charter of a private corporation, it is authorized to borrow money and issue bonds therefor, an ordinary undertaking without seal is sufficient to bind the company. The same doctrine seems gradually to have found favor in England, and may now be deemed after repeated and well considered adjudications to be fully established as the common law, at least, where the nature and business of corporations created by charter or statute, constantly, if not daily require contracts to be made to carry on its corporate operations."

And so also in the Province of Quebec the same rule holds, as stated in *Wood, et. al.*, v. *Shaw*,[5] which was an action on promissory notes given by the defendant to an insurance company and transferred, and the defendant pleaded want of authority on the part of the secretary of the company to endorse the notes, and it was held that, by the law of the province, commercial corporations were recognized or considered as natural persons in their ordinary transactions;

[1] *Gowan Marble Co.* v. *Tarrant*, 73 Ill. 608, Su. Ct., 1874.
[2] Agency, p. 49.
[3] Withrow's Corporation Cases.
[4] 46 Ala. 376, Su. Ct., 1871.
[5] 3 L. C. Jur. 173.

and the old law of England, which held that a corporation could only contract in writing under its common seal, is now repealed, and the publicly recognized officers of such a corporation, must, from the nature of things, be intrusted with such powers as would enable them to carry out the ordinary affairs of the institution.

In the Province of Ontario the decisions appear to have varied with the special circumstances of each case, the principal of those maintaining the right of action on parol, and other contracts not under seal, are :—

1. *Whitehead* v. *Buffalo & Lake Huron R. R. Co.*,[1] in which the managing director of a railway company entered into a contract in his own name, adding "acting on behalf of the company," with a person for the construction of the road, and for keeping it in repair. On a bill filed to enforce this contract, held that the contract did not require the common seal to render it binding. On appeal, the judgment was varied in so far as it allowed damages to the contractor for not being allowed to complete the contract.

2. *Brown* v. *The Corporation of the Town of Belleville.*[3]—in which defendants wished to dredge their harbour, and the plaintiff had a dredge then in the state of New York, which, after negotiations with the chairman of the committee on harbor and town property, he offered to lend to the corporation on certain terms, one of which was, that the corporation should pay the cost of its transport to Belleville. The committee recommended this offer to the council and it was adopted. The chairman then told the plaintiff to bring the dredge to Belleville, which he did, at a cost of $373. The committee afterwards decided to let out the dredging by contract to another person. Held, that the corporation were liable to the plaintiff for the cost of bringing the dredge, although there was no contract under seal.[3]

[1] 7 Ch. 351 ; Robinson's Dig., p. 774.

[2] 30 Q. B. 373 ; and Robinson's Dig., p. 774.

[3] This case is all the stronger as being with a public Corporation in whose contracts greater strictness of form is usually required.

3. *By the decision in Raines* v. *Credit Harbor Co.*, it appeared that a municipal corporation may be liable, on a parol contract, to have a clerk or servant to render services to their ordinary business.[1]

4. *In Blue* v. *Gas and water Co.*,[2] assumpsit was held maintainable against defendants for the non-performance of a special parol agreement with plaintiff for the supply of water to the Toronto baths.

5. *In McDonald* v. *The Upper Canada Mining Co.*,[3] the plaintiff was held entitled to compensation, for discovering to defendants a valuable mining location under an informal agreement that he should be compensated.

6. *In Hamilton and Port Dover Railway Co.* v. *Gore Bank*, an agreement by which the Bank was to garnish certain debts due to the railway company, in satisfaction of a debt due from the latter to it, the c[illegible] of which, as between attorney and client, the railway company was to pay, was held good without seal. So also in several cases of lease, the want of a seal was held no objection to an action on the lease. But otherwise, where the contract was executory only. A trading company entered into a written contract, but not under a corporate seal, for the purchase of a quantity of barrels; held that the contract being executory, that defendants, though a trading corporation, were not liable for not refusing to accept barrels not then manufactured, nor for refusing to allow the plaintiff to continue to manufacture barrels according to the agreement.[4]

And in New Brunswick, where a written contract was made in the name, and on behalf of a corporation called the "Lancaster Mill Company" by their agent, with the plaintiffs, whereby the plaintiffs, for certain stipulated payments which would amount to over £600, to be made by the company, engaged to cut, raft and draw to the company's mills a large quantity of logs in the course of the ensuing sea-

[1] Robinson's Dig., p. 775.
[2] *Ibid*, p. 776.
[3] *Ibid*, p. 778.
[4] *Wingate* v. *Enniskillen Oil Refining Co.*, Robinson's Dig., p. 777.

son, it was held, that the company was not liable on the contract, because there was no sufficient proof of the agents authority, or of a recognition of the contract by the corporation, or of the appointment of officers under the Act of incorporation to manage the business of the company, and because the contract was of such nature and extent as could only be made under the common seal of the company.[1]

(*f*) *Other formalities.*—Another interesting case, involving, not the use of the seal, but other formalities necessary to show a perfect contract of employment, was that of *Wood* v. *The Ontario & Quebec R. R. Co.*,[2] in which the plaintiff sued defendants for services performed by him as their agent in obtaining bonuses from the different municipalities through which the defendants' railroad was to pass; and the only evidence of his appointment was a letter written by one of the directors, stating that, at a meeting of the board, he was directed to make arrangements with the plaintiff to work up the bonuses, and requesting him to proceed forthwith. It was shown also that the president had recognized and adopted his services, and partially paid therefor. Held, that though under the Act incorporating the railway and the Railway Act of 1868, the defendants were empowered to appoint an agent to negotiate for and obtain municipal aid, and that for that purpose a resolution of the board of directors, or an entry or minute in their record of proceedings, would have been sufficient without the formality of a by-law or the seal of the company; that the proof as made of the plaintiff's engagement, or of the acceptance of his services by the company, was insufficient; but a new trial was granted, without costs, to enable him to supply proper evidence, if possible.

An exception to this rule, however, is "that whenever an act of agency is required to be done in the name of the principal under seal, the authority to do the act must

[1] *Seelye* v. *Lancaster Mills Co.*, 1 Kerr 377; Stevens' Dig., p. 335.
[2] Robinson's Dig., p. 775.

generally be conferred by an instrument under seal. Thus, for example, if the principal should authorize an agent to make a deed in his name, he must confer the authority on the agent by deed. And the ground of this doctrine appears to be that the power to execute an instrument under seal should be evidenced by an instrument of equal solemnity.[1]

This is the distinction followed out in the above sections, which provides that, for all ordinary transactions on behalf of the company, neither the authority nor the written evidence of the transaction (if any) need be under the seal of the company; but that for the execution of deeds an express power is necessary, which being given under the seal of the company, confers upon the person accepting authority to execute on behalf of the company, either under his own seal or under the seal of the company.[2] The power to a duly empowered agent or attorney to use his own seal in the execution of deeds on behalf of the

[1] Story Agency, 6th Ed., p. 44-45.

[2] The history of the law on this point under the English Acts is rather peculiar. In *Henderson* v. *The Australian Navigation Co.*, and in *London Dock Co.* v. *Sinnott*, which were on contracts, it was held that the actions might be maintained, though the contracts were not under seal; "and the point was considered so completely settled at the time of passing the Companies Act, 1862, that the Government was advised to direct the omission of the 41st section of the Act of 1856, which enacted that a Company, like an individual, should be bound by the Acts of an agent having its express or implied authority." In *Prince* v. *Prince*, the omission proved to be an unsafe one, and in the Act of 1876 the section was restored. Thring, 3rd Ed., p. 123. The section as it there stands reads thus: —"Contracts on behalf of any Company under the principal Acts may be made as follows— (1.) Any contract, which if made between private persons would be by law required to be in writing, and, if made according to English law, to be under seal, may be made on behalf of the Company in writing under the common seal of the Company, and such contract may be in the same manner varied or discharged. (2.) Any contract, which if made between private persons, would be by law required to be in writing and signed by the parties to be charged therewith, may be made on behalf of the Company in writing signed by any person acting under the express or implied authority of the Company, and such contract may in the same manner be varied or discharged. (3.) Any contract, which if made between private persons would by law be valid, although made by parol only, and not reduced into writing, may be made by parol on behalf of the Company by any person acting under the express or implied authority of the Company, and such contract may in the same way be varied or discharged. And all contracts made according to the provisions herein contained shall be effectual in law, and shall be binding upon the Company and their successors, and all other parties thereto, their heirs, executors or administrators, as the case may be.

company, appears to be peculiar to this Act, and must be regarded as a novelty. It is not found in the English Acts or any of the previous Canadian Acts; and in the State of Ohio, where a paper purporting to be a conveyance from the president and directors of an incorporated company, was executed by the president in his own name, and under his seal, it was held not to be a deed of the corporation.[1] "The corporate seal is the only organ by which a corporation can oblige itself by deed; and though its agents affix other private seals to a contract binding upon it, yet these not being seals as regards the corporation, it is in such case bound only by simple contract." The permission here given to the agent to use his own seal, and thereby to bind the company, seems, therefore, to attack in its last stronghold, that relic of emblematic law, and to point to the total banishment of the seal from legal documents, at least as necessary to their validity. Whether the innovation will prove a wise one or not there is nothing as yet to determine.

3. Loans to Shareholders.

68. Except only in the case of a Loan Company,[2] no loan shall be made by the Company to any shareholder, and if such be made, all Directors and other officers of the Company making the same, or in any wise assenting thereto, shall be jointly and severally liable to the amount of such loan, with interest, to the Company, and also to the creditors of the Company for all debts of the Company then existing, or contracted, between the time of the making of such loan and that of the repayment thereof.

The penalty here imposed on directors for making loans to shareholders contrary to the Act, it will be observed, is the same as that imposed by section 67[3] for paying dividends when the company is insolvent, or when there has been nothing earned to warrant the payment of dividends. The penalty is a very sweeping one, and should act as a powerful check upon the temptation to make such loans. The check, however, cannot be said to be a needless one.

[1] *Hatch* v. *Barr*, 1 Ohio 390.

[2] With regard to Loan Cos., *vide post*.

[3] *Vide supra*.

Nothing perhaps has been a more fruitful source of disaster to companies than the tendency in directors to speculate, either directly or by the medium of others, with the funds under their control. And regarding this very obvious reason for the provision of such a check, it must be held to apply as well to loans made to themselves, or to one another, as to loans made to shareholders who are not on the management. The provision is not new, having formed part of the Act of 1869, and is part also of the companies' clauses' Act of that year, as well as other Canadian Acts.

4. Liability of Directors for Wages.

69. The Directors of the Company shall be jointly and severally liable to the clerks, labourers, servants and apprentices thereof, for all debts not exceeding six months' wages due for service performed for the Company whilst they are such Directors respectively; but no Director shall be liable to an action therefor, unless the Company has been sued therefor within one year after the debt became due, nor yet unless such Director is sued therefor within one year from the time when he ceased to be such Director, nor yet before an execution against the Company has been returned unsatisfied in whole or in part; and the amount due on such execution shall be the amount recoverable with costs against the Directors.

The logic of this section is not very apparent. Why the directors should incur any personal liability in respect of wages, more than in connection with any other matter within the scope of their duties, will require some ingenuity to discover. The section is in direct contradiction of, and must be regarded as an exception to the rule laid down in section 57,[1] which says that every director and his heirs, etc., is to be indemnified and saved harmless out of the funds of the company from all charges and expenses, which he shall sustain or incur in or about the affairs thereof, "except such costs, charges and expenses as shall be occasioned by his own wilful neglect or default." As therefore the employment of clerks and servants is as a rule indispensable to the carrying on of the affairs of a company, there appears no good reason why the directors should be personally liable for this item of expenditure, (which is

[1] *Vide supra*, p. 320.

often a very important and considerable one), except it is as a check upon the tendency to make money by the appointment of relations at good fat salaries. But as such appointments can always be controlled by the shareholders in general meeting,[1] this can scarcely be regarded as a satisfactory explanation of the object of the section.[2] The liability however, is hedged about with so many conditions that very few cases, it may safely be assumed, would arise under it, in which the directors would be condemned to pay in consequence. Thus the wages sued for must have been earned during the directorate of the person sued. The suit must first have been brought against the company itself, and judgment had, and execution returned unsatisfied before the recourse to the directors becomes open and available. And it must have been so brought against the company within a year from the time the wages claimed were earned, or else all recourse to the directors is lost; and finally, it can only be for six months' arrears of wages,[3] that is for services actually rendered, so that the directors, it would appear, would not be liable for future wages, *i.e.*, for breach of contract to employ, as where the company is wound up, etc., or from any other cause, the services of the plaintiff are no longer required. Of course, in a winding up or insolvency,[4] it might so happen that the assets, being insufficient to pay all the creditors in full, the employees of the company would find it necessary to avail themselves of the provision of the section. And, indeed, it would only be under such circumstances, that they would be driven to that step; and then they would, under the Dominion Insolvent Act of 1875 and its amendments,[5] be entitled to two months' arrears in full out of the assets of the company. And where the Insolvent

[1] *Vide*, sec. 32, *supra* p. 200.

[2] The provision, though common to the Canadian Acts, is not found in either the English or American, so far as I have discovered.

[3] Under the former Act (1869) and also under the Companies' clauses Act, and under the local Acts of Ontario and Quebec, a years wages or salary may be claimed under the same circumstances.

[4] *Vide Winding up, post.*

[5] 38 Vic., cap. 16, sec. 91; and 40 Vic., cap. 41, sec. 22, now repealed.

Act does not apply, they would be entitled to three months' arrears under the Quebec code.[1] But where the estate of the company is actually and regularly in the hands of a receiver or assignee to be wound-up, it may be doubted whether the conditions precedent concerning judgment and execution against the company would be required. Proof, however, would be necessary to show that no more could be obtained from the assets of the company, or perhaps that the affairs of the company had been regularly wound-up, and the company no longer existed. It will be observed that the section prescribes no limit to the time within which the action against the directors may be brought; and the right of action therefore, it may be assumed, would be barred only by the common law of prescription of the place in which the action was brought. No such provision appears to exist in any English or American Act at present in force.

5. Actions by and against Company.

70. Any description of action may be prosecuted and maintained between the Company and any shareholder thereof; and no shareholder shall, by reason of being a shareholder, be imcompetent as a witness therein.

71. In any action or other legal proceeding, it shall not be requisite to set forth the mode of incorporation of the Company, otherwise than by mention of it under its corporate name, as incorporated by virtue of letters patent—or of letters patent and supplementary letters patent, as the case may be—under this Act; and the notice in the *Canada Gazette*, of the issue of such letters patent or supplementary letters patent, shall be *prima facie* proof of all things thereby declared; and on production of the letters patent or supplementary letters patent themselves, or of any exemplification or copy thereof under the great seal, the fact of such notice shall be presumed; and, save only in any proceeding by *scire facias* or otherwise for direct impeachment thereof, the letters patent or supplementary letters patent themselves, or any exemplification or copy thereo under the great seal, shall be conclusive proof of every matter and thing therein set forth.

We have already seen[2] that actions may be instituted by the company against shareholders for arrears of calls, and

[1] Quebec Civil Code, Art. 2006.

[2] By sec. 56, *vide supra*, p. 314.

the pleading and evidence required to sustain them. We have seen also that actions may be instituted by shareholders on the other hand against the company for various causes, such as the rescission of a contract to take stock, damages caused by misrepresentation, etc. So that the first of these two sections establishes simply in general terms what might otherwise be understood to have been the intention of the legislature with regard to the principle in question. The section moreover is declaratory of that which has been found, by universal experience to be an essential feature of Joint Stock Companies, viz: a right of action by and against its own members. And this right of action constitutes one of the leading differences between a Joint Stock Company and a simple partnership at common law, in which no right of action exists for money due, or in settlement of accounts, while the partnership continues. The section therefore may be regarded as a useful one in affirming in language about which no doubt can arise this general right of action between a company and its own members.

The same principle is fully recognized, both in England and the United States;[1] but the party suing must be actually and at the time of bringing the action a member of the company. "Therefore a person who has sold his shares, even though he still remain under liabilities, cannot institute proceedings" as a sha reholder.

The same is the case respecting intending shareholders, but whose contract is not complete, or who have not complied with all the formalities necessary to be classed as members, a company who is owning shares in another company, or a creditor, such as a policy holder in an insurance company, whose contract gives him an actual interest in the Company's affairs.[3] But where the rights of an actual member are violated or refused, an action will lie either by

[1] See Act (Imp.) 1862, and Angell & Ames' Corporations; sec. 390.

[2] Brice, *ultra vires*, p. 845.

[3] *Ibid*, p. 846. This, however, it is conceived would not apply to holders of policies in Mutual Companies who are ostensibly members.

summons, mandamus or otherwise to enforce them. Thus in the *State* v. *the Georgia Medical Society*[1] the general rule was laid down that where a corporator has a constitutional right which has been violated by the corporation, and he has no other adequate remedy, he is entitled to relief by mandamus. And so in like manner mandamus will lie upon the petition of a corporation to compel the surrender to its lawful officers of books and papers pertaining to their office, and held by persons actually, but not lawfully exercising the functions of those officers.[2] But a writ of mandamus will not lie commanding an officer to do what is not in his power to do, as, for instance, to apply certain funds to a specific purpose, he having already diverted such funds to another purpose.[3] Nor will a mandamus be granted to compel a transfer of shares if the petitioner can be indemnified, upon the refusal of the company, by an action at law.[4]

(*a*) *By one shareholder against another.*—And an action will lie by one shareholder against another, or others in his own name, on behalf of himself alone, or on behalf of himself and others; but he has no right to sue in the name of the company without the company's consent.[5] And where an action was commenced by a shareholder in his own name and that of the company as plaintiffs, and the shareholders resolved (the company having in the meantime gone into voluntary liquidation) that the action should not be continued in the company's name, the Court ordered

[1] Su. Ct. Ga. 328; Withrow's Corporation Cases.

[2] *Am. R. R. Frog Co.* v. *Haven*, 101 Mass. 398, Su. Ct., 1869; Abb. Dig., Vol. II.

[3] *Rice* v. *Walker*, 44 Iowa 458, Su. Ct., 1876; Abb. Dig., Vol. II.

[4] *Murray* v. *Stevens*, 110 Mass. 95, Su. Ct., 1872; Abb. Dig., Vol. II. By the Code of Procedure of the Province of Quebec, mandamus lies in the following cases:—1. Whenever any Corporation neglects or refuses to make any election, which by law it is bound to make, or to recognize such of its members as have been legally chosen or elected, or to reinstate such of its members as may have been removed without lawful cause; 2. Whenever any person holding any office in any Corporation, omits, neglects or refuses to perform any duty belonging to such office, or any act which by law he is bound to perform; 3. Whenever any heir or representative of a public officer omits, refuses or neglects to do any act which as such heir or representative he is by law obliged to do; 4. In all cases where a writ of mandamus would lie in England. C. P. C. Art. 1022.

[5] 37 W. R. Dig. 43.

he company's name to be struck out as plaintiffs, but gave leave to the plaintiff shareholder to add the Company as defendants.[1]

(*b*) *Pleading in.*—And the second is complementary of it, declaring in effect merely that no action, by or against a company, shall be defeated by reason of informalities or irregularities in the framing of the letters patent, or by reason of the omission to plead, or set up, that such formalities were complied with ; but the letters patent or any exemplification or copy thereof under the great seal, shall be *conclusive proof* of every matter and thing therein set forth. And in the United States the same rule holds, having been laid down in several cases that a person who contracts with what purports to be a corporation is estopped from denying its corporate existence at the date of the contract.[2] And in another case held that while it is true that to sustain a grant, or that under the operation of the doctrine of estoppels a variance in the name of a corporation may be disregarded, it is otherwise as to an act done by the Corporation for its own benefit, in accordance with the requirements of a statute.[3] But in Upper Canada, where the defendants, a company, were styled in the bill the "Ontario Wood-Pavement Co." and certain other defendants, alleged to be directors of this company when brought up to be examined for discovery, denied all connection with, and refused to answer any questions relating to "The Ontario Wood-Pavement Company of Toronto," there being no further evidence of this fact than the word of the plaintiff's solicitor, an application to compel the defendants to answer the questions put to them was refused.[4] And in such an action admissions and declarations made by officers of the Corporation are competent evidence against it.[5]

[1] *Silber Light Co.* v. *Silber*, 27 W. R. 427; 48 Law J. Rep. 385; 40 L. T. 184.

[2] *McBroom* v. *Corporation of Lebanon*, Su. Ct. of Ind. 373.

[3] *Glass* v. *The Tipton, Petersburgh & Berlin Turnpike Co.*, Su. Ct. Ind. 377.

[4] *Dickey* v. *Ontario Wood-Pavement Co.*, 6 P. R. 93 Chy.; Robinson's Dig. 753.

[5] *McGinnis* v. *Adriatic Mills*, 116 Mass. 117; Abb. Dig., Vol. II.

This right, however, though fundamental, will be suspended by a winding up order, or by the affairs of the Company being placed in the hands of a Receiver or Assignee, as will the right of action generally against the Company or for the collection of an undisputed claim. In the English Act there are several sections which provide for the suspension of proceedings already instituted, and for the prevention of new proceedings;[1] and though no such provision is found in the present Act or in the Insolvent Act, 1875, it may be safely assumed that the effect of a winding up order, or of an order to place the Estate in the hands of liquidators or assignees would be the same. The question, however, will be found more fully discussed in a subsequent chapter.[2]

6—Forfeiture of Charter.

72. The charter of the Company shall be forfeited by non-user during three consecutive years at any one time, or if the Company do not go into actual operation within three years after it is granted; and no declaration of such forfeiture by any Act of Parliament shall be deemed an infringement of such charter.

There are two ways in which, under the present Act the charter of a company may be forfeited. One is by non-compliance with its terms,[3] and the other "by non-user during three consecutive years *at any one time*." But, as we have seen[4] neither of these grounds of forfeiture can be pleaded in answer to an action by the company, or in nullification of acts done by it in accordance with its powers, until the forfeiture is first regularly declared. For although neither of the cases[5] on this point refer to the question of forfeiture

[1] Sec. 85 of the Act of 1862, provides that either on the application of the Company itself or of any creditor or contributory of the Company the Court may suspend all actions against the Company after the presentation of a petition for a winding up. And sec. 87 provides, that after an order has been made for winding up a Company, no suit, etc., shall be proceeded with or commenced, except with leave of the Court.

[2] *Vide* "Winding up," *post*.

[3] *Vide* sec. 38, *supra* p. 224.

[4] *Vide supra* p. 316.

[5] *Windsor Hotel Co.* v. *Murphy*, and *Bank of Montreal* v. *Thompson*, 1 Leg. News, Mon., 75-76.

by non-user under this section, the terms of sec. 38 for instance, regarding the forfeiture of corporate rights for neglect to keep books, are quite as absolute as those of the present section; and, therefore, even where it is notorious that the company has been idle for three years and upwards, it must be assumed that the forfeiture would have to be regularly declared before it could be set up in bar of the corporate rights of the company. The same rule, following apparently the English cases, is adopted by an American authority,[1] which says, "A cause of forfeiture cannot be taken advantage of or enforced against a corporation collaterally or incidentally, or in any other mode than by a direct proceeding for that purpose against the corporation, so that it may have an opportunity to answer." And in West Carolina, etc., Insurance Co.,[2] held, that in an action by a corporation an answer setting up that the plaintiff had forfeited its charter by non-user, but which did not aver that forfeiture had been declared by judicial proceeding for that purpose, is not sufficient on demurrer. Nor will the Courts entertain a bill by an individual to enforce forfeiture of a corporate franchise, for the right belongs to the State alone.[3] Indeed, the latter part of this section would seem to point to the necessity of a declaration of the forfeiture by special Act of Parliament, but this can scarcely be the intention of the section, as in the case of a company formed under the general Act such as this, the question of forfeiture would naturally be one for judicial decision rather than the subject of special legislation.[4] For in either case, whether the allegation of forfeiture be in consequence of a non-compliance with the terms of the charter, or in consequence

[1] Angell & Ames, Corporations; sec. 777.

[2] 31 Ark. 476, Su. Ct. 1876.

[3] *Gaylord* v. *Fort Wayne, etc., R. R. Co.*, 6 Biss. 286; *Gilman* v. *Greenpoint Co.*, 4 Lan. 482, 61 Barb. 9; Abb. Dig., Vol. II.

[4] Where the incorporation is by special Act, however, the case would appear to be different. According to Lindley rights so conferred can only be taken away in the same manner. Lindley Part. p. 197. It is perhaps on this account that the Companies clauses Acts contain no similar section to the present, though the forfeiture for failure to keep books is provided for both by the Dominion and Quebec Acts. C. 32-33 V. C. 12, S. 29 and Q. 31, V. C. 24, S. 29.

of non-user, it must always be subject to denial and proof. The entire section, however, appears to be peculiar to Canadian legislation, though in *Rex* v. *Amery*, an English case cited by Angell & Ames,[1] it was said that all franchises may be lost by non-user or neglect; and *in re State* v. *Commercial Bank*,[2] it was said that a company may lose its charter for non-user by discontinuing all its ordinary business for a year, except that of settling up its concerns. Neglect of some of its powers, however, will not be ground of forfeiture, as in neglecting to make calls, etc., or as in the case of an insurance company refusing to take an extra hazardous risk.[3]

(*a*) *Form of Proceeding.*—The mode of proceeding to forfeiture under the English law is by *scire facias*, but in the United States, apparently by *quo warranto*.[4] In England a distinction is drawn, the former being used to declare an absolute forfeiture, and the latter where the company is assuming a right which it does not possess, or otherwise acting in violation or excess of its powers.[5]

7. Future Legislation.

73. The Company shall be subject to such further and other provisions as Parliament may hereafter deem expedient.

The "further and other provisions" here spoken of refer clearly to any future amendments which may be made to the Act. The company being organized and carried on under general legislation, would be always subject to any alterations to which such general legislation might be subject. And this rule obtains even in the United States, where the granting of a charter is regarded as a contract entered into between the State and the Company which neither can voluntarily violate. Thus, in *Tomlinson* v. *Branch*,[6]

[1] Sec. 774
[2] *Ibid.*
[3] *Ibid.*
[4] Brice, *ultra vires*, p. 909.
[5] 15 Wall. 460, Su. Ct. U. S., 1872; Abb. Dig., Vol. II.

it was held that the objection that a law altering a charter impairs the obligation of the contract, is unavailing when passed under a general power reserved by a law antedating the charter, providing that the charter of amendment should be subject to amendment or repeal. And under such general power a succeeding legislature may repeal an Act of a former legislature.[1] And if a company is organized and carried on under this Act, and one or more of its provisions be altered or amended, the company would be bound thereby; that is to say, would in the future be subject to the amended provisions in like manner, and to as great extent as it was before to the original ones. And on the principles already laid down,[2] a company created by letters patent under this Act, would be subject to such special legislation as Parliament might deem expedient; though the occasion for such might probably never arise, as any alteration in the constitution of such company is already provided for.[3]

8.—Fees.

74. The Governor in Council may, from time to time, establish, alter and regulate the tariff of the fees to be paid on application for letters patent and supplementary letters patent under this Act; may designate the department or departments through which the issue thereof shall take place, and may prescribe the forms of proceeding and record in respect thereof, and all other matters requisite for carrying out the object of this Act:

2. Such fees may be made to vary in amount, under any rule or rules—as to nature of Company, amount of capital, and otherwise—that may be deemed expedient:

3. No step shall be taken in any department towards the issue of any letters patent or supplementary letters patent under this Act, until after the amount of all fees therefor shall have been duly paid.

Under the English system the schedule of fees is appended to the Act; or rather the maximum amounts chargeable for registration, the precise amounts being apparently

[1] *Tomlinson* v. *Jessup*, 15 Wall. 454, Su. Ct. U. S., 1872; Abb. Dig., Vol. II.

[2] *Supra*, p. 160.

[3] *Vide supra*, p. 145.

under the control of the Board of Trade.[1] The system indicated in the present section, however, and indeed the language of the section is identical with that of the other Canadian Acts, the Governor-in-Council being changed to the Lieut-Governor-in-Council in the local Acts.[2] The department having been designated by the Act,[3] this clause leaving it to the Governor-General-in-Council to regulate such matters would seem to be inconsistent with previous provisions of the Act. But the object of the clause is, doubtless, no more than to give to the Governor-General-in-Council power to regulate matters which may arise, the regulation of which is found to be otherwise unprovided for. By the third clause the payment of the fees is wisely made a condition precedent to anything being done towards the granting of letters patent.

9.—Proof of Matters.

76. Proof of any matter which may be necessary to be made under this Act may be made by solemn declaration under the Act thirty-seventh Victoria, (1874) chapter thirty-seven, or by affidavit before any Justice of the Peace, or any Commissioner for taking affidavit to be used in any of the Courts in any of the Provinces of the Dominion, or any Notary Public, who are hereby authorized and empowered to administer oaths and receive affidavits and declarations for that purpose.

The matters here referred to must be presumed to be *ex parte* matters arising out of the provisions of the Act; such as are mentioned in sections 6, 16, 23 etc., and not

[1] The section of the Act which refers to fees reads as follows:—"There shall be paid to the registrar by a Company having a capital divided into shares in respect of the several matters mentioned in the Table marked B. in the first Schedule hereto, the several fees therein specified, or such smaller fees as the Board of Trade may from time to time direct; and by a Company not having a capital divided into shares, etc. All fees paid to the said registrar in pursuance of this Act shall be paid into the receipt of Her Majesty's Exchequer, and be carried to the account of the Consolidated Fund of the United Kingdom of Great Britain and Ireland." Act 1862, sec. 17.

[2] The tariff of fees under the present, and also under the local Acts, will be found in the appendix; *post*.

[3] The department through which all the forms and proceedings having reference to the issue of letters patent under the Act are taken is said in the commencement of the Act to be that of the Secretary of State. *Vide*, secs. 6, 9, 15, etc.

matters of a contentious or litigious character, of which proof would be required in the ordinary manner.[1]

10. Letters Patent not void for Irregularity.

77. The provisions of this Act relating to matters preliminary to the issue of the letters patent or supplementary letters patent shall be deemed directory only; and no letters patent or supplementary letters patent issued under this Act shall be held void or voidable on account of any irregularity in any notice prescribed by this Act, or on account of the insufficiency or absence of any such notice, or on account of any irregularity in respect of any other matter preliminary to the issue of the letters patent or supplementary letters patent.

The subject in this section has been referred to already under section 9,[2] and again by section 71.[3] The section itself however, appears to be new to Canadian legislation. It is not found in the Act of 1869, or in the Quebec Act of 1868; and has been inserted here as declaratory of what the law was found to be according to the decisions in the English cases; and which gave rise to a corresponding provision in the English Act, 1862.[4] Thus in *Oake* v. *Turquand*,[5] Lord Chelmsford said "I think the certificate prevents all recurrence to prove matters essential to registration, amongst which is the subscription of a memorandum of association by seven persons; and that it is conclusive in this case that all previous requisites have been complied with." And in *Banwen Iron Co.* v. *Barnett*[6] the Court, under 7 and 8, Vic. Cap. 110 refused to hold the registration void, (at least as far as regards shareholders,) because all the requisites of the Act had not been complied with. Nor could persons on that ground have their names removed from the list of contributories.[7] *In re* Barneds

[1] *Vide* sec. 71, *supra* p. 369.

[2] *Vide supra*, p. 122.

[3] *Supra*, p. 369.

[4] Act 1862, sec. 18.—A certificate of the incorporation of any Company given by the registrar shall be conclusive evidence that all the requisitions of this Act in respect of registration have been complied with.

[5] 2 L. R. 3 E. & I. 325; 36 L. J. Ch. 949.

[6] 19 L. J. C. P. 17; 8 C. B. 406.

[7] Independent Assurance Co., E. P. Bird, 10 L. J. Ch. 30; 1 Sim. N. S. 47.

Banking Co., Peel's case,[1] the registrar objected to the memorandum of association as going beyond the prospectus; whereupon the bearer, then and there, and without any communication with the persons who signed it, made alterations to remove the registrar's objections, and he at once registered it in the altered form. The company was held to be duly constituted, the certificate of registration being under this section conclusive evidence that the requirements of the Act had been complied with. And where one of the seven subscribers of the memorandum was an infant at the time of the registration, the Company was, nevertheless, held to be effectually incorporated.[2] And in *Pare* v. *Clegg*, it was held that the certificate of the registrar of friendly societies was conclusive evidence of the society being lega as regards contracts. And in New Brunswick held that that where a corporation is credited by letters patent under the great seal of the Province, and under the signature of the Lieut-Governor, it will be presumed that such letters patent were properly issued.[4] But in *re* Northumberland and District Banking Co.[5] Turner said, "If a company was not authorized to be registered, it is quite clear that the certificate of registration could be of no avail. And held also in the same case that 19-20, Vic. 47, sec. 13, did not enable the registrar to extend the Act to companies not within his scope; and the certificate had no effect to incorporate a company which was not entitled to be incorporated. And so the letters patent, though under the present section covering any irregularity or omission in the formalities preliminary to their issue, would not cover a defect in the jurisdiction by which they were issued; and letters patent therefore which would be found to be unauthorized by the Act, or to be *ultra vires* of the authority

[1] L. R. 2 Ch. 674; 36 L. J. Ch. 757.

[2] Nassau Co., 2 Ch. D. 610.

[3] 7 Jur. N. S. 1136.

[4] Stevens' Dig., p. 336.

[5] 2 De. G. & J. 371; 27 L. J. Ch. 354.

purporting to issue them, would be set aside by a competent Court.[1]

11. The Word "Limited."

78. The Company shall paint or affix, and shall keep painted or affixed, its name, with the word "limited" after the name, on the outside of every office or place in which the business of the Company is carried on, in a conspicuous position, in letters easily legible, and shall have its name with the said word after it, engraven in legible characters on its seal, and shall have its name, with the said word after it, mentioned in legible characters in all notices, advertisements and other official publications of the Company, and in all bills of exchange, promissory notes, endorsements, cheques, and orders for money or goods, purporting to be signed by or on behalf of such Company, and in all bills of parcels, invoices and receipts of the Company.

79. If the Company does not paint or affix, and keep painted or affixed, its name, with the word "limited" after it, in manner directed by this Act, it shall be liable to a penalty of twenty dollars for not so painting or affixing its name, and to a penalty of twenty dollars per day for every day during which such name is not so kept painted or affixed; and every director and manager of the company who shall knowingly and wilfully authorize or permit such default shall be liable to the like penalties; and if any director, manager, or officer of such Company, or any person on its behalf, uses or authorizes the use of any seal purporting to be a seal of the Company whereon its name, with the said word "limited" after it, is not so engraven as aforesaid, or issues or authorizes the issue of any notice, advertisement or other official publication of such Company, or signs or authorizes to be signed on behalf of such Company any bill of exchange, promissory note, endorsement, cheque, order for money or goods, or issues or authorizes to be issued any bill of parcels, invoice, or receipt of the Company, wherein its name, with the said word after it, is not mentioned in manner aforesaid, he shall be liable to a penalty of two hundred dollars, and shall further be personally liable to the holder of any such bill of exchange, promissory note, cheque, or order for money or goods, for the amount thereof, unless the same is duly paid by the Company.

These two sections are almost identical with secs. 41 and 42 of the English Act of 1862. The penalty under the latter Act is five pounds. By the amending Act of 1867,[2] however, "associations not for profit," that is non-trading associations, are relieved from the necessity of using the

[1] As to mode of proceeding to impeach letters patent see section 71, p. 369. And in *Rex.* v. *Sir O. Butler*, 3 Lev. 220, it was said:—"Letters patent are repealed by a writ of *scire facias*, which is founded on the record of the patent."

[2] Sec. 23.

word "limited" after their name. No such exception is made by the present Act, but as a matter of fact large numbers of such associations are carried on without ti. Very few cases appear to have arisen out of neglect of this provision, but in *Penrose* v. *Martyn*,[1] where the secretary of a limited company had accepted on behalf of the company a bill directed to the company, and omitted the word "limited" as part of its name, and the bill was dishonoured, the secretary was held personally liable.

12.—Existing Companies may obtain Charter.

80. Any Company for purposes or objects within the purview of this Act, heretofore incorporated, whether under a special or a general Act, and now being a subsisting and valid corporation, may apply for Letters Patent under this Act, and the Governor in Council, upon proof that notice of the application has been inserted four weeks in the *Canada Gazette*, may direct the issue of Letters Patent, incorporating the shareholders of the said Company as a Company under this Act, and thereupon all the rights or obligations of the former Company shall be transferred to the new Company, and all proceedings may be continued or commenced by or against the new Company that might have been continued or commenced by or against the old Company; and it shall not be necessary in any such Letters Patent to set out the names of the shareholders; and after the issue of the Letters Patent the Company shall be governed in all respects by the provisions of this Act, except that the liability of the shareholders to creditors of the old Company shall remain as at the time of the issue of the Letters Patent.

81. Where a subsisting Company applies for the issue of Letters Patent under this Act, the Governor in Council may, by the Letters Patent, extend the powers of the Company to such other objects within the purview of this Act as the applicants may desire, and as the Governor in Council may think fit to include in the Letters Patent, and which have been mentioned in the notice of the application for the same, in the *Canada Gazette*, and may, by the said Letters Patent, name the first Directors of the new Company, and the Letters Patent may be to the new Company by the name of the old Company or by another name.

13. Subject to the Provisions of the Act.

82. All the provisions of this Act touching the obtaining of supplementary Letters Patent by Companies incorporated hereunder shall, so far as applicable, apply and extend to applications for Letters Patent under the eighteenth and eighty-first sections hereof.

[1] E. B. & E. 499.

By reference to that part of the English Act of 1862, which refers to this subject, several useful hints may be obtained concerning matters not to be found in these sections. The English Statute goes into the subject much more fully and minutely than the present one.

(*a*) *Companies formed under former Acts.*—And, first, as to the position of a company already in existence at the time the present Act came into operation. Is it affected, and if so, to what extent by the provisions of this Act? Is it affected in such way as to make it desirable to cast off its old garments and to clothe itself in the authority of the present Act only? Some light may be obtained on these questions by reference also to section 105 of this Act.[1] There it is provided that no provision of any previous Act shall, as touching any company formed under it, "be in anywise affected by this Act."[2] It is clear, therefore, that a re-incorporation under the new Act is not at all events a necessary proceeding. But though the provisions of previous Acts are not affected as regards companies formed under them by the provisions of this Act; still, it by no means follows that such companies are not subject to such provisions of this Act as are not inconsistent with the Act under which it was formed. Indeed, by reference to section 73 of this Act,[3] it would appear that such companies would be subject as to all future operations to such provisions. In such case then, they would be working partly under one Act and partly under another, or, in other words, that a company formed under the Act of 1869, for instance, (which still exists in reference to such company), would be subject not only to that Act, but also to such provisions of

[1] *Vide post.*

[2] Similar language is found in the previous Acts, and in the local Acts of Ontario and Quebec. They would appear to differ however from the principle of the English Act, for by section 176. it is provided, that subject as hereinafter mentioned, this Act, with the exception of Table A, in the first Schedule, shall apply to Companies formed and registered under the said Joint Stock Cos. Acts (*i. e.*, previous Acts) or any of them in the same manner, as if such Company had been formed and registered under this Act.

[3] *Vide supra.*

the present Act as are not inconsistent therewith. Thus, section 43 of the present Act, which contains provisions concerning the transmission of stock otherwise than by transfer, which are not found among, and are apparently not inconsistent with the provisions of the Act of 1869, would be applicable to companies formed under that Act. This would furnish one motive for re-corporation, and it might be found further desirable to shift from the regime of the old to that of the new Act, especially if amendments have been made in the latter, of advantage to the company.[1]

(*b*) *Re-corporation.*—A company may be thus re-corporated by the same name or by new name, with the same powers and objects, or with such increased powers as within the provisions of the Act, the Governor-General in Council may see fit to include in the letters patent.

(*c*) *And thereupon all the rights" etc.*—As soon as the new letters patent are obtained, all the property, rights and claims which the company possessed previously thereto, pass *de plano*, and by the sole operation of law, to the new company. This is doubtless the effect intended, though the expression "shall be transferred" used in the above sections, not so explicit as that used in the English Act, "shall pass to and vest in the company."[2] But though circumstances might arise under which doubt might be raised as to the precise legal effect of these words, "shall be transferred," in general practice they occasion little or no

[1] Thus, in an English case, it was said:—"The section provides that registration shall not be invalid by reason that it has taken place with a view of winding up, and thus a company which has no power of selling and transferring its business may by registration, followed by voluntary liquidation, acquire the power of sale given by section 161. *Southall* v. *British Mutual Society*, L. R. 6, ch. 614.

[2] The wording of the English Act in this connection is more explicit all through than the present one, though the terms of the above sections really embrace all that is intended by either. The English Act says, "All such property real and personal, including all interests and rights, in to and out of property real and personal, and including obligations and things in action as may belong to or be vested in the company at the date of its registration under this Act, shall in registration pass to and vest in the company as incorporated under this Act for all the estate and interest of the company therein. Act, 1862; sec. 193.

difficulty. If a company, for instance, obtained a new charter, but by the same name as formerly, the company would to all intents and purposes be the same company as that which existed before. Its identity would be in no manner impaired, and no formalities would therefore necessarily follow its re-corporation. It would continue precisely in the same manner, and with the same rights and obligations as it before possessed, except in so far as these may have been expressly changed in its new charter.

(*d*) *Formalities necessary.*—Nor would any change of identity be occasioned by a change of name; though in order to avoid doubt or confusion, certain formalities might be necessary. Thus, for this purpose it might be found necessary to renew the registration of any real property held by the company, so that it should not remain registered in the name of a company which, by that name at least, no longer existed; though the right would not apparently be in any way affected by the want of such renewal. For, as the section proceeds to say, "all proceedings may be continued or commenced by or against the new company that might have been continued or commenced by or against the old company"; or, in other words, stating that the company is identically the same company, before and after re-corporation, and its rights and obligations remain identically the same. And so complete is this identity that such proceedings may be continued or commenced apparently in either name, though perhaps the more correct way would be to plead or implead in the new name, referring to the old one; *ex. gra.* "The Moisic Iron Company, (limited), hèretofore known and described as the Moisic Company, (limited), a body politic and corporate," etc. And all contracts direct or collateral remain the same. Thus, in *Groux's Improved Soap Company* v. *Cooper*,[1] (an English case), it was held that a surety to a company, registered under one Act and re-registered under another, was not discharged by the re-registration.

[1] 8 C. B. N. S. 800.

(*e*) "*The liability of shareholders to creditors*," *etc*—Neither is any change effected in the liability of the shareholders to the creditors of the company by the re-corporation. The shareholders cannot avail themselves of any difference between the present Act and the one under which they were previously incorporated to escape liability. The pr ns of all the Canadian Acts are, however, pretty much the same in this regard, the liability of the shareholder to the creditors extending to the amount unpaid on his shares, and no more.[1]

(*f*) "*All the provisions*," *etc*.—Section 82 clearly means that the formalities preliminary to obtaining letters patent by an old company as to passing of resolutions, delays thereon, application, notice and evidence of these formalities, are the same as those for obtaining supplementary letters patent, described in sections 14, *et seq*,[2] and that fees would be payable in like manner.[3]

14. Payment of Shares.

83. Subject to the provisions of sub-section five of section five of this Act, every share in the Company shall be deemed and taken to have been issued and to be held subject to the payment of the whole amount thereof in cash, unless the same shall have been otherwise determined by a contract duly made in writing and filed with the Secretary of State at or before the issue of such shares.[4]

15. Prospectus.

84. Every prospectus of the Company, and every notice inviting persons to subscribe for shares in the Company, shall specify the dates and the names of the parties to any contract entered into by the Company or the promoters, directors or trustees thereof, before the issue of such prospectus or notice, whether subject to adoption by the directors or the Company or otherwise; and any prospectus or notice not specifying the same shall be deemed fraudulent on the part of the promoters, directors and officers of Company knowingly issuing the same, as regards any person

[1] Under the Banking Acts, however, it is different; and the principle is therefore a useful one to establish.

[2] *Vide supra*, p. 148.

[3] For fees see appendix, *post*.

[4] *Vide supra*, p. 253, where this question has been already discussed.

taking shares in the Company on the faith of such prospectus unless he shall have had notice of such contract.[1]

16. Power to Borrow on Bonds, Debentures, Mortgages, etc.

85. In case a by-law authorizing the same is sanctioned by a vote of not less than two-thirds in value of the shareholders then present in person or represented by proxy, at a general meeting duly called for considering the by-law, the directors may borrow money upon the credit of the Company and issue the bonds, debentures or other securities for any sums borrowed, at such prices as may be deemed expedient or necessary; but no such debentures shall be for a less sum than one hundred dollars; and the directors may, under the like sanction, hypothecate or pledge the real or personal property of the Company to secure any sums borrowed by the Company: Provided always, that the amount to be borrowed shall not at any time be greater than seventy-five per cent. of the actual paid-up stock of the Company; Provided also, that the limitation by this section made shall not be held to apply to commercial paper discounted by the Company.

The general question of the power of the directors to pledge the credit of the Company for borrowed money, has already been to some extent discussed;[2] but there are several points of detail which may be noticed here. Where a company whose deed of settlement required that mortgages should be executed with certain prescribed formalities, a security given to the solicitor of the Company, in which one of the formalities, viz, the sealing, was omitted, was held not binding on the Company.[3] But in another case it was said if there be power to charge, and there be shewn an intention to create a charge, a valid charge may be created, although the legal security given may be incomplete.[4]

In the Humber Iron Works Co's. case,[5] it was said that under a power to mortgage, a mortgage of arrears of a call already made is valid. And so is the mortgage of the proceeds of a call not yet made, but determined on, although

[1] As to all questions relating to the prospectus of a Company *vide supra*, Chap. II.

[2] *Vide supra*, p. 205.

[3] General Provident Assurance Co., 30 L. J. 320.

[4] Strand Music Hall Co., 3 D. J. & S. 147.

[5] 16 W. R. 474, 667.

so determined upon with a view of giving a charge upon it.[1] And if the power to borrow is limited, as by the above section, and the directors borrow money or debentures at a time when the liabilities already exceed the limit, the debentures are void, and the holders can come in only *pari passu* with simple contract creditors.[2] Again, it is said that debentures may be issued at a discount under a power to borrrow money on such terms as they think fit, or to borrow or raise money, or to borrow simply.[3] But in the present case this power is clearly implied in the terms of the section which authorizes the issue of bonds, debentures, etc., at such prices as may be deemed expedient or necessary.

What are Bonds, etc?—This question arose in a recent case in England.[4] A company with an office in London, incorporated for the purpose of acquiring land in Florence, building thereon and selling mortgages, or leasing such property, gave power by its articles of association to its directors in order to the management of the company to borrow money by mortgage on any part of the property of the company, or by "bonds, debentures, or mortgage debentures;" such bonds, etc., to entitle the holders to be paid out of the moneys, property and effects of the company. The company, in pursuance of these powers, issued obligations in the year 1868, by each of which they purported to bind themselves, their successors, and assignees, and all their estate, property and effects, to repay the sum of £100, in the year 1875, with power to the company to redeem a certain part of the obligations in each of the intermediate years. The bonds were payable to bearer, and carried interest till payment. Held that, construed in the

[1] Sankey Brook Coal Co., L. R. 9 Eq. 721; *Pickering* v. *Ilfracombe Ry. Co.*, L. R. 3, C. P. 235, 247.

[2] Pooley Hall Colliery Co., 21 L. T. 690.

[3] *Vide*, Buckley Joint Stock Cos., 3rd Ed., p. 136.

[4] *In re* Florence Land and Public Works Co., Moor's Case, 27 W. R. 236.

light of the articles of association, the bonds constituted a charge on the property of the company for the time being, subject to the power of the directors to dispose of such property in the ordinary course of the business for which the company was constituted.

17.—Company may have Agencies.

86. The Company may have an agency, or agencies, in any city or town in England, Scotland or Ireland.[1]

18. Directors to submit statement.

87. The directors of every Company shall lay before its shareholders a full and clear printed statement of the affairs and financial position of the Company at or before each general meeting of the Company for the election of directors.[2]

[1] *Vide supra*, p. 109.
[2] As to liability for false reports *vide supra*, p. 269.

CHAPTER VII.

DISSOLUTION AND WINDING UP.

1. WINDING UP.
   - (*a*) "*The Company shall be subject,*" *etc.*
   - (*b*) *When Company to be wound up.*
   - (*c*) *Mode of winding up under English Act.*
   - (*d*) *Power to wind up voluntarily.*
   - (*e*) *Effect of dissolution.*
   - (*f*) *When winding up commences.*
   - (*g*) *Cessation of business.*
   - (*h*) *Status of liquidators.*
   - (*i*) *Compulsory winding up.*
2. CONTRIBUTORIES.
   - (*a*) *Liability of, after winding up commences.*
   - (*b*) *Effect of transfer when winding up intervenes.*

1. WINDING UP.

75. The Company shall be subject to the provisions of any Act for the winding up of Joint Stock Companies, and to the provisions of "*The Insolvent Act of* 1875," and the amendments thereto, relating to incorporated companies.

(*a*) "*The company shall be subject, etc.*[1]"—No provision is made by this or any other Dominion Companies' Act for the winding up of companies formed under it. In the English Act, on the contrary, a very large space is devoted to this branch of the subject, and the whole question, in almost all the books on Joint Stock Companies, is most elaborately treated.[1]

(*b*) *When Company to be wound up.*—It is manifest that there are two entirely different sets of circumstances under which it may be deemed necessary to wind up a company.

1. When the objects of the Company are fulfilled, or when from any other cause it is considered inexpedient to continue.

[1] The English Act, however, it must be remembered makes provision for more than one kind of Company, and more than one kind of liability, which gives rise naturally to greater complications in winding up.

2. When the company is insolvent, and a winding up in the interests of the creditors is unavoidable. The first has been aptly termed a voluntary winding up; the second, an involuntary. The first is decided upon at the instance of the company itself; the second, as a rule, at the instance of its creditors. The present Act makes no provision for either.[1]

(*c*) *Mode of winding up under English Act.*—By the English Act three different modes of winding up are provided: viz., Winding up by the court, as when a company is insolvent and a compulsory order has been issued to that effect.[2] Voluntary winding up; and Winding up subject to the supervision of the court.

The difference between these different modes of winding up a company, is thus stated—"In the first case the liquidators are agents of the court, and, if the company be insolvent, are trustees only for the creditors; while in the second case, the liquidators are trustees for the company, and the winding up, so far from implying insolvency, may be only a scheme for dissolving the company, with a view to changing its constitution, or amalgamating with some other company. In the third instance of winding up, subject to the supervision of the court, the liquidators are appointed by the company, but are subject to the control of the court."[3] The difference in expense of these different systems, makes it in all cases a matter of importance to those interested, as to which is adopted. It is for this

[1] By a recent Act of the Quebec Legislature, provision is made for the voluntary winding up of Companies formed under the Quebec Joint Stock Companies Acts. *Vide post.*

[2] The Company, however, need not be insolvent to be so wound up, nor is the order necessarily a compulsory one. A Company may be wound up by the Court under any of the following circumstances:—1. Whenever the Company has passed a special resolution requiring the Company to be wound up by the Court. 2. Whenever the Company does not commence business within a year from its incorporation, or suspends its business for the space of a whole year. 3. Whenever the members are reduced in number to less than seven. 4. Whenever the Company is unable to pay its debts. 5. Whenever the Court is of opinion that it is just and equitable that the Company should be wound up.

[3] Thring, Joint Stock Companies, 3rd Ed., p. 174.

reason, always an object to avoid the judicial method wherever it is possible to do so. "The expense of each system" says the writer above quoted[1] varies almost directly in proportion to the extent in which the aid of the court is invoked," and if the assets be small, the chances are proportionately great, that they will be eaten up in litigation and the creditors get nothing. "A voluntary winding up," says Thring,[2] "may in a great measure command the advantages without the disadvantages of a compulsory process; and nothing but an extreme case of fraud on the part of the company or its officers makes it advisable for either creditors or contributories to wind up a company altogether by the court."

(*d*) *Power to wind up voluntarily.*—The present Act, however, as has been stated, provides no means for the winding up of companies under it, and it remains to be seen what course a company should adopt which wishes to bring its affairs and existence to an end. Can it by resolution wind up its affairs, and surrender its charter in the absence of provision to that end? In England it appears to be now well settled that it can, though by the common law, a corporation could not be dissolved by the will of all its members, "for," says one authority,[3] "a charter cannot be got rid of without the assent of the Crown, nor can an Act of Parliament be got rid of without the assent of the Legislature." The present state of the law with regard to Joint Stock Companies, therefore, appears to be another instance of the yielding to expediency, which forms one of the most striking features of the history of Joint Stock Companies from the commencement. That a Joint Stock Company in England can be dissolved by the mere will of its members, the machinery for that purpose provided by the Act of 1862, affords the best possible proof;[4] but, besides

[1] Thring, Joint Stock Companies, p. 175.

[2] *Ibid*, p. 176.

[3] Lindley, Partnership, 2nd Ed., p. 196.

[4] But it must be remembered that the system of incorporation there is by a simple act of registration, and not by charter.

this, we have the opinion of an English writer who says: "With regard to any process of dissolution which is purely voluntary, the better opinion is that the corporation may adopt it."[1] And the same authority says, that such a course may be adopted on resolution of the majority, so as to bind the minority; but relief may be afforded a creditor or person interested in special cases by means of an injunction restraining the company from proceeding with the winding up.[2] But this, not as a matter of law, but of equity, where hardship or injustice must otherwise result. In the United States the right of voluntary dissolution appears to be undoubted. "In this country," says one authority,[3] "the power of a private corporation to dissolve itself by its own assent seems to be assumed by nearly all the judges who touch upon the point." And, again, "It is held in Massachusetts that corporations of a private nature, established solely for trading or manufacturing purposes, may, by vote of a majority of their members against the protest of a minority, wind up their affairs and close their business if, in the exercise of a sound discretion they deem it expedient, so to do; that they may sell the whole of their property to a new corporation, taking payment in shares of the new corporation, to be distributed among those of the old stockholders who are willing to take them." And in *Harts* v. *Brown*,[4] in the United States, held, that when the directors of an insolvent corporation have given all the stockholders an opportunity of making advances to relieve the company from embarrassment, but they refuse, and the corporation has no means to avoid a sale, the directors have a right to purchase the indebtedness and acquire title of the corporate property by enforcing a sale under a deed of trust given to secure such indebtedness, and the stockholders have no right to complain. In *Taylor* v. *Earle*,

[1] Brice, *ultra vires*, p. 837.
[2] *Ibid*, p. 839, and cases there referred to
[3] Angell & Ames, Corporations; sec. 774.
[4] 77 Ill. 226, Su. Ct., 1875; Abb. Dig., Vol. II.

however, in the New York Supreme Court, in 1876,[1] it was held that a corporation has no power to transfer all its property, thus terminating its existence, and take in payment stock in a foreign corporation carrying on the same business in another State. By the code of procedure of California,[2] a company may be dissolved by the County Judge of the county where its office or principal place of business is situated, upon its voluntary application for that purpose. In other States the mode of dissolution of a corporation is prescribed by its charter or Act of Incorporation, "as by the consent in writing of five-sixths in value of the members, or by the concurrence of three-fourths of the members present at a general meeting," etc. But a unanimous vote of the stockholders is not necessary to the surrender of the franchise of a corporation, and the dissent of one stockholder should not be allowed to prevent a dissolution desired by all the other members of the company.[3] When a method of dissolution, however, is provided by statute, that method must be followed.[4]

(*e*) *Effect of dissolution.*—But the forfeiture of the charter, or even an assignment in insolvency does not effect a complete dissolution of a corporation so as to terminate its existence. This was the result of several decisions in the United States. And in Upper Canada, in the case of *Brooke* v. *the Bank of Upper Canada*[5] the same thing was held. In that case process was served upon A. as president of the bank, he having been elected in June, 1866, for one year. No election as president or directors had taken place since then, and A. in fact, never resigned his office. In September, 1866, the bank suspended specie payments, and before sixty days thereafter assigned their property to trustees, and ceased to do business as a bank.

[1] 15 N. Y. Su. Ct. 1, 1876; Abb. Dig., Vol. II.

[2] Article 1227. *Vide* Proffatt, Corporations, p. 97.

[3] *Wilson* v. *Proprietors of Central Bridge*, 9 R. I. 590, Su. Ct., 1870; Abb. Dig., Vol. II.

[4] *The State of Cal.* v. *The President and Trustees of the College of Cal.*, Su. Ct. Cal., 161.

[5] 4 P. R. 162; Robinson's Dig., 783.

It was provided by the charter that a suspension of specie payments for sixty days, or an excess of the debts of the bank by three times the paid up stock and deposits, etc. should operate as a forfeiture of the charter. Held, that the total annihilation of the bank was not contemplated by these provisions; and it did not follow from the loss of the charter that there must be a dissolution for all purposes; that some formal process was still necessary to finally determine and put an end to all the functions of the corporation; that the bank was still a corporate body, liable to have its property sold or administered for the satisfaction of its debts; and that A. must still be looked upon as president; and an application to set aside the service upon him was discharged with costs.

The affairs of a company are fully wound up within the meaning of section 142 of the Companies Act, 1862, when all has been done that the liquidators can do to wind them up, even though there may be some assets outstanding, or debts unpaid; and when there has been a dissolution of a company under a voluntary winding up, the court has no jurisdiction to impeach that dissolution, unless there has been fraud in the proceedings.[1]

This then may be laid down as the position of Joint Stock Companies under the Dominion Act, that though no provision is made by the Act for the voluntary winding up of such a company, the company may, nevertheless, on resolution of a majority of its shareholders, regularly passed at a meeting, *called for the purpose*, wind up its affairs and return its charter into the hands of the Governor-in-Council, of which surrender notice should be given in the *Canada Gazette*, in the same manner as when the charter is issued. But as nothing is said in the Act[2] as to when and under

[1] In re *London* v. *Caledonia Marine Ins. Co.*, 27 W. R. 713; L. R. 11 Ch. D. 146; 40 L. T. 666.

[2] But where a Joint Stock Company had ceased to do business, and its directors had resigned, and its place of business had been burnt down, and the shareholders at a duly convened general meeting named the Secretary-Treasurer, Assignee, assisted by a Council of Advisers, composed of three

what circumstances such a winding up may take place, the company may be called upon by any person interested, and who is likely to suffer thereby, to shew cause for such a step, and why should they not be restrained from proceeding with it.[1]

(*f*) *When winding up commences.*—A few of the rules deducible from the English Act, and the cases arising under it with regard to a voluntary winding up, are, first, that a voluntary winding up is deemed to commence at the time of the passing of the resolution authorizing it;[2] and, when the voluntary winding up takes place by means of a preliminary, followed by a confirmatory resolution, the commencement of the winding up dates from the passing of the confirmatory resolution.[3] And if the winding up is continued under an order of the court (as for compulsory liquidation) the result is the same; the order making no change in the date at which the winding up is deemed to have commenced.[4]

(*g*) *Cessation of business.*—The business of the company ceases from the commencement of the winding up, except in so far as may be necessary to the profitable settlement

of the late Directors, with full power to wind up the affairs of the Company; Held that such appointment was invalid, and that an action brought by such assignee in the name of the company would be dismissed. *The Quebec Agricultural Implements Co.* v. *Herbert*, 1 L. C. R. 363. This decision, however, went upon the ground that the company should have been wound up under the Insolvent Act.

[1] Under the English Act, a company may be wound up voluntarily—(1) Whenever the period, if any, fixed for the duration of the company by the Articles of Association expires, or whenever the event, if any, occurs, upon the occurrence of which it is provided by the Articles of Association that the company is to be dissolved, and the company, in general meeting, has passed a resolution requiring the company to be wound up voluntarily. (2) Whenever the company has passed a special resolution requiring the company to be wound up voluntarily. (3) Whenever the company has passed an extraordinary resolution to the effect that it has been proved to their satisfaction that the company cannot, by reason of its liabilities, continue its business, and that it is advisable to wind up the same. Act, 186?; sec. 129.

[2] *Ibid*, sec. 130.

[3] Dawe's Case, L. R. 6 Eq. 232; Weston's Case, L. R. 4, Ch. 20; Hornby's Case, 16 W. R. 1164; 19 L. T. 237.

[4] Buckley, Joint Stock Cos., 3rd Ed., p. 255.

of its affairs.[1] No transfer of shares can be made after the commencement of the winding up, except with the sanction of the liquidators.[2] Nor can the status of a holder after that period be changed, with regard to his membership. And thus where a transfer was made to an infant who had still not attained his majority at the commencement of the winding up, it was held that the transferor might be placed on the list of contributories, although the transferee attained his majority before the application to the court, and expressed a wish to retain the shares.[3] But a transfer made and registered, *bona fide*, in the interval between the preliminary and confirmatory resolutions, is valid and effectual.[4] Nor is a transfer without the sanction of the liquidators, illegal, and an action will lie by, or against, any of the parties thereto, or on obligations arising therefrom, although the sanction of the liquidators has not been obtained.[5]

(*h*) *Status of liquidators.*—In a voluntary winding up, the liquidators are essentially the agents of the company, instead of the agents, as under a compulsory order of the court, "and the winding up, so far from implying insolvency, may be only a scheme for dissolving the company, with a view to changing its constitution, or amalgamating with some other company."[6]

(*i*) *Compulsory winding up.*—A compulsory winding up of companies formed under this Act was until recently governed by the provisions of the Insolvent Act of 1875 and amendments. The repeal of that Act, however, has taken away all provision for the compulsory winding up of a company or corporation, for the benefit of all the creditors, except such as may exist under the common law of the

[1] Act 1862, sec. 131; and see also sec. 3 of Act of Quebec, *post*, and cases thereunder.

[2] Act 1862, sec. 131.

[3] Castello's Case, L. R. 8 Eq. 504; Lymon's Case, L. R. 5 Ch. 298.

[4] Hornby's Case, 16 W. R. 1164; 19 L. T. 237.

[5] *Biederman* v. *Stone*, L. R. 2 C. P. 504.

[6] Thring, Joint Stock Cos., 3rd Ed., p. 174.

different provinces.[1] Under the English Act an order for a compulsory winding up may be applied for by a creditor, a contributory, or by the company itself. Under this the shareholder is held entitled to apply, but is classed as a contributory even when his shares are fully paid up.[2] But there seems to be no good reason to doubt that whether ranked as a contributory, or not, he could petition, as he is essentially a creditor, and the liability of the company to him, on the shares he holds, is one of the regular liabilities of the company, though its liquidation is postponed to those of other creditors. And notwithstanding it is in the nature of a suspended liability, being immature until a winding up takes place, nevertheless, such suspension is in point of fact, terminated by the insolvency of the company, on evidence of which the shareholder would become an active creditor, and endowed with all the qualifications necessary to apply for the issue of a writ. Certain exceptions, however, under the English Act appear to have been made to this rule in the discretion of the court. Thus in a number of cases[3] it was held that the shareholder must show sufficient grounds for a winding up, for his interest is only this, *that if there be a surplus of assets he is entitled to be repaid a portion of such surplus.* And *in re* The Diamond Fuel Co.,[4] it was held that if the Company's assets are insufficient for the payment of its debts *a paid up shareholder has no interest whatever, and his petition may be dismissed with costs.* But where these objections did not exist an order has been granted, even upon the petition of the executors of a shareholder.[5] With regard to other creditors, as a rule the petition will be rejected if the claim of the applicant is *bona fide* disputed. This at least is the effect of a number of cases which have been decided under the English Act.

[1] Thus, in the Province of Quebec, a creditor may sue and obtain judgment, under which, if an allegation of insolvency be made, the creditors may be called in, and the estate wound up, whether that of an individual or a company.

[2] Anglesea Colliery Co., L. R. 2 Eq. 379; *Ib.* 1 Ch. 555.

[3] Buckley, 3rd Ed., p. 178.

[4] W. N., 1878, 11.

[5] Norwich Yarn Co,, 12 Beav. 366.

In re The Catholic Publishing Co.[1] it was held that in case of the debt on which the petition is founded being *bona fide* disputed by the company, the convenient and proper course is not to try the question of the debt on the petition, but to adjourn the hearing of the petition until the debt has been established at law. And in another case it was said that if the debt was *bona fide* contested and there is no evidence, other than non-compliance with the statutory notice to show that the company is insolvent, and the company denies its insolvency, the petition will be dismissed. But the company must show reasonable grounds for disputing the debt;[3] and *in re* the Kings-Cross Industrial Dwellings Co.,[4] it was said that if the court sees that the debt was disputed on some ground which is not substantial, the court will itself decide on the question of fact, and to save the trouble and expense of an action at law, a winding up order may be made with the direction that it be not drawn up for some short time in order to give the company an opportunity to meet the demand.[5] But when the debt is established it appears that the court has no discretion, if the application is within the Act. There are several decisions to this effect one of which is *Bowes* v. *The Hope, etc., Society*,[6] in which Lord Cranworth said: "It is not a discretionary matter with the court, when a debt is established and not satisfied, to say whether the company shall be wound up, that is to say, if there be a valid debt established, valid both at law and in equity. One does not like to say positively that no case could occur in which it would be right to refuse it, but ordinarily speaking, it is the duty of the court to direct a winding up." *In re* The Langley Mill Co.[7] however it was said that if a majority of creditors are of a different opinion

[1] 33 L. J. Ch. 325.
[2] L. R. 19 Eq. 444, 448.
[3] Brighton Club, etc., 35 Beav. 204.
[4] L. R. 11 Eq. 149; 19 W. R. 225.
[5] *Vide* Buckley, 3rd Ed., p. 168.
[6] 11 H. L. C. 389.
[7] L. R. 12 Eq. 26.

to the petitioning creditor, the court is bound to have regard to their wishes, and may accordingly make a supervision order instead of a compulsory order, or if the company be already in voluntary liquidation, may refuse to make any order if a majority of creditors so desire.[1] Under the Dominion Insolvent Act,[2] the judge to whom application was made, could, before granting the petition, order the official assignee to inquire into the affairs of the company, and report within a period of ten days from the date of such order; or he could without such examination or upon report made, order that a meeting of creditors be called, at which meeting the creditors present who should verify their claims under oath, could pass such resolutions, either for winding up the affairs of the company, or for allowing the business to be carried on as they deemed most advantageous, and the resolutions so adopted, submitted to the judge, after forty-eight hours notice to the company, and by him confirmed, modified, or rejected, as he might deem expedient. He could order the immediate issue of a writ of attachment, or suspend such proceedings for six months, during which time the business of the company would be under the supervision of the assignee, or he could appoint a Receiver to take charge of the company's affairs, and report. During this six months another meeting of creditors was to be called, and on the resolutions adopted thereat, the judge could grant a further delay of six months, or order the issue of the writ. If, at the expiration of the second period of six months the demands made against the company had not been satisfied, the judge had no further discretion, but was bound to order the issue of a writ of attachment, and the estate had to be wound up, unless the creditors, entitled to the writ, consented to a further delay.[3]

2—Contributories.

(a) *Liability of.*—The various questions which arise from the liability of contributories under the English Act do

[1] See also Buckley, 3rd Ed., p. 166.

[2] (Repealed.)

[3] Insolvent Act 1875, sec. 147, sub-sec. 11.

not arise under the Dominion Act, inasmuch as by the latter there is but one form of liability, viz., the liability to pay all that remains unpaid on the stock in the holders hands.[1] In the English Act the term "contributory" is used technically, and refers only to those who are liable to contribute to the assets *after a winding up has commenced*, either from insolvency or any other cause. As soon as such winding up order is made, and the affairs of the company are placed in liquidation, these questions arise: Who are liable to contribute to the assets of the company? and to what extent are they liable? As has been stated, under the English Act this liability may arise in various ways, and be of different kinds and degrees. Hence, many and often complicated are the questions raised by it. But the simplicity of the Dominion Act in this respect avoids these questions and makes their introduction here unnecessary. There are points, however, which may arise under this head, and which it may be useful to refer to. They relate principally to the effect of the issue of an order, or commencement of winding up proceedings, on those liable to contribute. As we have seen[2] the right of a person whose name has been wrongfully placed on the share-list to have it removed is terminated by such proceedings, but if steps have been taken to have the name removed before the winding up order has issued, then he will be entitled to continue and show that his name is wrongfully on the list, and he is not liable to contribute. This was the result of the decision in *The Reese River Silver Mining Co.* v. *Smith*,[3] in which Lord Westbury said, "that if on the ground of fraud well founded, the plaintiff files his bill anterior to the winding up order, to have his name removed from the register, and to cancel the alleged relation asserted to have been created between him and the company, he has a right to pursue

[1] But by the Banking Act each shareholder is liable in case of insolvency to an amount equal to the face value of their shares in addition to anything remaining unpaid thereon in the first instance. C. 34 Vic., cap. 5, sec. 58.

[2] *Vide supra*, p. 69, 245, 253.

[3] L. R. 4 H. L. 77.

that suit to its consequence, and to have the consequence given effect to, notwithstanding it may be attempted to be interrupted by the obtaining of a winding up order." But the mere fact of having initiated proceedings to have the name removed prior to the issue of a winding up order, or the presentation of a petition in compulsory liquidation, does not, of course, convey an absolute right to have the name removed, even where ground for voiding the contract can be shown. For if the holder or contributory has allowed his name to remain on the list for an unnecessary length of time before taking steps to repudiate the contract, presumably to see what the chances of gain may be, and only asks to have it removed when he sees that the company is about to be wound up, and there is a prospect of loss, he will be held to have forfeited his right to plead misrepresentation or other defect in the contract.

And it is not sufficient that he has been successful in resisting an action for calls on grounds which would void the contract: if his name has not been removed from the list, it appears that he will still be liable to the creditors of the company for the balance due on the shares held by him. Thus, where a shareholder instituted no proceeding of his own, but pleaded misrepresentation to action for calls, and obtained a verdict shortly before winding up, it was held, subsequent to a winding up order, that that did not entitle him to have his name removed from the register.[1]

Though these cases are peculiar to a winding up, most of the cases which are ordinarily classed under this head are cases in which the only question involved is as to the liability of the alleged holder to calls under any circumstances, that is whether his name is or is not rightly on the list. This question may, of course, be raised and decided at any time, for the liability of a person to contribute to the assets of a company is precisely the same before an after a winding up has been instituted; the only difference being that, after a winding up has been commenced, the

[1] *In re* Stevenson, 16 W. R. 95.

prima facie liability of a person whose name is on the list of shareholders cannot be removed. This was the result of the decision in *Oakes* v. *Turquand*,[1] and *Stone* v. *The City and County Bank*;[2] the reason being that, before a winding up has commenced, the liability is between the alleged shareholder and the company, that is, between the original parties to the contract; while, after a winding up has been instituted, the liability is to the creditors of the company who are unaffected by the equities between the original parties. This point was stated very briefly and forcibly by Bramwell, J., in the latter of the two last-mentioned cases, in these words: "Whenever the rights of other persons intervene, a contract to take shares, though induced by fraud, cannot be rescinded."[3] And in Black & Co.'s case,[4] it was said "that equities which might be good as between the shareholders and the company, cannot, after a winding up, be set up against the creditors of the company." But in *Spackman* v. *Evans*,[5] Lord Chelmsford said: "There may be equities between the shareholders *inter se*, which may be adjusted in the course of working out the order, but with these the official manager and the creditors have nothing to do."

A recent case in point was that of *Tennent* v. *the City of Glasgow Bank*,[6] arising, like many others, out of the failure of the Bank, which stopped payment on the 2nd October, 1878. On the 5th, the directors issued an advertisement calling a general meeting of the shareholders, for the purpose of considering a resolution for the voluntary winding up of the company. Two accountants were employed to examine the books of the company, and to prepare a balance sheet. The report and balance sheet were posted on the 18th, and were received by the shareholders on the

[1] L. R., 2 H. L. 325.
[2] 3 C. P. Div. 309.
[3] Buckley, Joint Stock Cos., 3rd Ed., p. 96.
[4] L. R., 8 Ch. 254, 259.
[5] L. R., 3 H. L. 171, 238.
[6] 27 W. R. 649.

19th. The 20th was a Sunday, and on the 21st a shareholder presented a petition for the removal of his name from the list of contributories, on the ground of fraud on the part of the directors. A general meeting of the company was held on the 22nd, when it was resolved that the company should be voluntarily wound up. Held, that it was too late to repudiate his liability as a contributory in winding up. "So long as the company is a going concern, and the rights of creditors are not involved, the right to repudiate, if one has put oneself at issue with the company, and done nothing afterwards inconsistent with repudiation, is not affected by neglecting to see that one's name is taken off the register."[1] But should a winding up intervene, the neglect will be fatal. If proceedings have been taken prior to a previous winding up order, or to proceedings in compulsory liquidation under the legislation; or if one has joined with others in proceedings to free themselves from liability, he will be entitled to the benefit of the result of such proceedings, even though compulsory or other liquidation intervene. This was the effect of the finding in Pawle's case; and also in McNiel's case, both of whom were dissentient allottees of shares in the "Estates Investment Co." The two cases, however, were not precisely the same. Pawle had joined with Ross and others to attack the allotments. This was to be done by means of a test case in Ross' name; but all joining in the costs and agreeing to abide by the result. The result was in favor of Ross, but was appealed from; and pending the appeal, the company was wound up. The appeal was affirmed, and on the question being raised, it was held that Pawle was not a contributory, being in reality, though not nominally a party to the proceedings to set aside the allotment.[2] McNeil's case was still stronger. McNeil was not a party to the proceedings in any way. He had repudiated the allotment, however, in an interview with the Secretary of the Company, and at a general meeting of the shareholders, and

[1] Collier's Law of Contributories, p. 77.
[2] Buckley, Joint Stock Cos., 3rd Ed., p. 99.

had moreover received a circular from the company, stating that the directors had, at the request of the dissentient shareholders, consented to stay further legal proceedings for the recovery of unpaid calls until the following November, with a view to the amicable adjustment of their differences, etc. And on these facts McNeil was also held not to be a contributory, although no proceedings of a legal character had been taken by him at all.[1] But it does not follow from this that legal proceedings are unnecessary, and that a written or verbal repudiation of the shares is sufficient. In Hare's case[2] a letter to this effect was held to be insufficient to entitle him to relief. And in *Kent* v. *The Freehold Land Co.*,[3] Cairns, L. C., said that the fact that the shareholder had, before the winding up, written, intimating his repudiation of the shares, when coupled with his delay to file his bill for *two months* from that time, put his case in a worse position than it would otherwise have been in.[4] Briggs' case[5] appears, however, to be in conflict with these. In that case Briggs repudiated the shares on the 31st October, 1867, written sixteen days after learning the facts; but owing to ill-health nothing further was done, and he died on the 4th of January, 1868. A winding-up order was made on the 27th November, 1867; but it was held that having set the company at arm's length, his name must be taken off the list of contributories.

All of these cases again must be distinguished from those in which the contract is not only voidable, but absolutely void, as where a person's name is put on the list without any authorization whatever. In such cases of course it is unnecessary to do anything, nor will a winding up order affect the matter in any way. For, as stated in *Waterhouse* v. *Jamieson*,[6] the liquidator for the purpose of enforcing a

[1] L. R. 10 Eq. 503.
[2] L. R. 4 Ch. 503.
[3] L. R. 3 Ch. 493.
[4] Buckley, Joint Stock Cos., 3rd Ed., p. 99.
[5] 19 L. T. 758.
[6] L. R., 2 H. L. S., C. 29.

contract, stands only in the place of the company, and cannot enlarge the engagement of the shareholder beyond that which he has entered into. And, for a similar reason, if the shareholder has effectually ceased to be a member, and the company only are in default in not removing his name, he cannot be held.[1]

This rule then may be safely laid down as the result of the English decisions, viz: that unless an action to remove a shareholder's name from the list is actually pending at the time the winding up commences, the holder, no matter under what circumstances he became so, must be held contributory. And this whether the order be for a compulsory winding up or involuntary liquidation.[2]

In the United States, the rule appears to be pretty much the same, though the precise effect of a winding up order in this regard, has never been so distinctly affirmed as it has been in England. The general rule, however, is that the shareholder must proceed with diligence to disavow his membership and responsibility thereunder.[3]

Another effect of a winding up order is to suspend all other legal proceedings against the company, either at the instance of a creditor or otherwise. By the English companies' Act, 1862,[4] it is provided "the court may at any time after the presentation of a petition for winding up a company under this Act, and before making an order for winding up the company upon the application of the company, or of any creditor or contributory of the company, restrain further proceedings in any action, suit, or proceeding against the company upon such terms as the court thinks fit." In an English case this rule received the following illustration:—A garnishee order takes effect not from its date, but from its service. Consequently where

[1] Buckley, Joint Stock Cos., 3rd Ed., p. 101.

[2] *Stone* v. *City and County Bank*, 11 Exch. 310, 312; Thompson's "Liability of Shareholders," sec. 148.

[3] *Ibid*, sec. 161.

[4] Sec. 85.

a garnishee order had been obtained by a judgment creditor to answer an unsatisfied judgment against a company; but such order had not been served upon the garnishee until after a petition had been filed on which an order was subsequently made for the winding up of the company; it was held that the garnishee order not having been served prior to the commencement of the winding up, did not give any security to the judgment creditor on the debts sought to be attached, and that the liquidator was entitled to injunction restraining the judgment creditor from proceeding on the attachment.[1]

(*b*) *Effect of transfer where winding up intervenes.*—Another point which may arise concerning the liability of a shareholder upon a winding up, is, as to the effect of a transfer, or agreement to transfer, commenced before, but not completed before the institution of proceedings in liquidation. As we have seen in discussing the general rules concerning transfer,[2] the liability of a holder is not removed until the transferee has been accepted by the company, and his name entered upon the list. And even then to be effectual in relieving the transferor, certain elements are necessary. Thus, for instance, it must be, and be intended to be an absolute conveyance of all the rights of the transferor in the shares transferred, or, as the English writers call it, "an out and out transfer." The consent of the company must have been obtained without deception or misrepresentation, and with an adequate knowledge of the circumstances, and a winding up gives birth to this additional condition—it must have been made in due time before the winding up process commenced.

This does not mean that a length of time must elapse between the completion of the transfer and the commencement of the winding up, but simply that it shall have been completed. For, as we have seen, after the institution of

[1] *In re* Stanhope Silkstone Collieries Co., 27 W. R. 562; L. R. 11 Ch. D. 160; 48 Law J. Rep. 409; 40 L. T. 204.

[2] *Supra*, p. 276.

such proceedings, the company continues only for the purpose of being wound up, and no change in the status of the members is allowable, except by leave of the court, on special cause shown.[1]

But at the time of the institution of proceedings in liquidation, a number of contracts for the sale and purchase of shares may be pending, the transfer of which has not been completed, and the purchaser's name substituted for the vendor's, from one of these reasons.

1. Because the time has not yet arrived for the completion of the contract.

2. Because the vendor is in default.

3. Because the purchaser is in default.

4. Because the company has neglected or has refused to sanction the transfer.

Under these different circumstances the rights of the parties will manifestly be different, and the question which will necessarily arise will be—to whom are the creditors (supposing that the winding up is caused by the insolvency of the company), to whom are the creditors to look for the amount due on such shares?

With regard to the first position there would not appear at first sight to be any great difficulty. If no transfer can take place after proceedings in liquidation have been taken, and nothing but an agreement on the one side to sell, and on the other side to accept and pay for, has been entered into prior to the event, and nobody was in default, the agreement, every one would say, falls to the ground, and there is an end of the matter. But supposing the broker through whom the agreement to purchase was

[1] The language of the English Act is:—"Where any Company is being wound up by the Court all dispositions of the property, effects, and things in action of the Company, and every transfer of shares or alteration in the status of the members of the Company made between the commencement of the winding up and the order for winding up shall, unless the Court otherwise orders, be void." Act, 1862, sec. 153.

made, proceeds to carry it out at the proper time, notwithstanding the steps taken towards a winding up, and notwithstanding the name of his principal cannot be registered as holder of the shares, and in pursuance of the agreement pays to the vendor the money which is the price of the shares, will an action lie by the purchaser to recover the money, or will he be compelled to reimburse his broker if the latter has advanced the money himself. This was the position of affairs out of which arose the two cases of *Taylor* v. *Stray*,[1] and *Stray* v. *Russell*,[2] old cases, but still important from the leading principles of law expressed. The first case was that of the broker against his principal, the purchaser, for reimbursement of the money he had paid for the shares. The decision of the court turned upon this, that the vendor had tendered what he had contracted to deliver, viz., shares in a chartered company which still existed, though the business was suspended. "But," said Wills, J., "If after the bank had stopped the directors had made a standing order to refuse consent to all transfers, or had refused consent to this particular transfer, and that fact had been known to the plaintiffs at the time they paid the money, it would appear that the plaintiffs were in the wrong, and they would have no claim against the defendant."[3] This decision was prior, however, to the Companies' Act, 1862, which, as we have seen, makes void all transfers subsequent to proceedings in insolvency or liquidation, and is more important now from the abstract principles it involves than from the result of the decision itself. And that principle was clearly this, that had the transfer been one which would not have availed the purchaser to become a member of the company in place of the vendor, (as it clearly would not be in the case supposed of proceedings in liquidation being commenced pending the completion of the contract), then the tender to the broker would not have been a tender of what the

[1] 26 L. J. C. P. 165.
[2] 1 E. & E. 888.
[3] Digby, "Sale and Transfer of Shares," ect., p. 49.

vendor had contracted to sell, and the broker should have refused to accept, and the decision must have gone the other way.

Stray, however, under the circumstances of the case, being obliged to reimburse his broker, brought action to recover the money from the vendor on the ground that the consideration for which the money was paid, had failed. The result was the same as before, that is, the defeat of the purchaser; but the principle of law enunciated was, as before, that if the transfer tendered, had been one which could not have made him a member of the company, the vendor would have been obliged to refund the money. The ground on which the decision of the court turned was, that the consideration had not wholly failed, and that the plaintiff should have executed the transfer, and left them at the bank for registration, when, if the bank had refused to register, he would have been in a position to have raised the question of failure of consideration. It will be seen, therefore, while the actual decision in both these cases turned upon technicalities, the principle of law enunciated, amounted to this: that where, before the completion of a contract to deliver and accept shares, anything occurs which prevents the proposed purchaser from becoming a member in the room and stead of the vendor, the latter is no longer in a position to fulfil his part of the contract, and the agreement is void.

The decision of the Court of Common Pleas, in *Whitehead* v. *Izod*,[1] has been said to be in conflict with the principle here stated. But even that decision, which was stronger than *Stray* v. *Russell*, in its adherence to technicalities, does not deny the principle that where the tender is one which cannot avail to make the purchaser a member of the company in the place of the vendor, that it is not a tender of that which was agreed upon; that it is not an offer to complete the contract; and the purchaser cannot

[1] L. R. 2 C. P. 228.

be held liable either towards the company or his vendor.[1] In Ward and Henry's case,[2] and in Marino's case,[3] the same doctrine was applied, the Court refusing to order an alteration in the register, although the vendor in such case had done all that was incumbent upon him under his contract. Indeed, the only difficulty in all these cases appears to have arisen from a doubt as to the proper construction of sec. 35 of the Act of 1862, which gives the Courts power to order a rectification of the register where the name of any person is without sufficient cause entered in or omitted from it; or when default is made, or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member of the company, and which section would of course have no application to cases arising under the present Act.

Where the vendor is in default his name of course remains, and as the great desire of all parties in such cases, especially where the liquidation is compulsory, is to avoid membership, no difficulty can arise; but where the purchaser is in default[4] the case is different. If through such default it has become impossible to remove the vendor's name from the share-list, and substitute that of the purchaser, and the former is subject to a loss, he is entitled to his remedy. And this according to the English decisions is of several kinds. In *Humble* v. *Langston*[5] it was held, that the vendor, under such circumstances, who has been made to pay calls by reason of his name remaining on the share list through the fault of the purchaser, has a right to recover the amount so paid as special damage. But the decision in *Burnett* v. *Lynch*

[1] L. R., 2 Ch. Ap. 431.

[2] L. R., 2 Ch. Ap. 596.

The decision in this case turned upon the wording of sec. 153 (*vide supra*, p. 407, *note*) "unless the Court otherwise orders," the Court (Willes, J.) holding that the purchaser could not urge that the contract was void until he had taken means under these words, that is, made application to the Court, to find out whether it was so or not.

[4] By "default" is of course meant neglect on the part of purchaser to do anything which it was incumbent upon him to do in fulfilment of the agreement, and this includes not only wilful, but accidental neglect. Digby Transfer, p. 43 note.

[5] 7 M. & W. 529.

carried the doctrine still further, and said, "that where the transferor of shares had done all in his power to vest them in the transferee, and the transferee had accepted the shares from the transferor, *there is an implied obligation on the part of the transferee* to indemnify the transferor against all liability which may arise from his continuing to be the legal, though he has ceased to be the beneficial owner." [1]

Other remedies are given by the English jurisprudence; as an action for specific performance, for example; but as specific performance in such case is impossible, they simply amount to and result in a right to indemnity. Thus, in *Evans* v. *Wood*,[2] and also in *Paine* v. *Hutchinson*,[3] a decree in the nature of specific performance was granted, although specific performance was impossible. The cases on this point are, however, conflicting, for both in *Birmingham* v. *Sheridan*[4] and in Emmerson's case,[5] grave doubt was expressed that specific performance and indemnity could be decreed where specific performance was impossible. There is no doubt, however, that where the transferor has done all that was incumbent upon him to do, and the transfer has not been completed, only from the fault or default of the transferee, the transferor is entitled to his remedy in damages. And the measure of such damages is the amount he has been called upon to pay by reason of his name remaining on the register or shareholders list.

As to who is obliged to see to the registration of the transfer, that is quite a different question, and one on which, in many cases, the rights of the parties would probably turn. By the 26th section of the supplementary Act of 1867, (English), it would appear to be the duty of the

[1] Digby Transfer, p. 44.
[2] L. R., 5 Eq. 9.
[3] L. R., 3 Eq. 257.
[4] 33 Beav. 660.
[5] L. R., 1 Ch. Ap. 433.

transferor to see to the registration.[1] No absolute rule appears, however, to be laid down anywhere on the subject, the question being governed in each particular case, by the rules of the company, or the rules of the exchange in which the transaction takes place, or by the undertaking and agreement of the parties themselves. *In Stevens* v. *Medina*[2] —held that the expense of completion of the transfer is on the purchaser.

It sometimes happens, however, that neither the transferor nor the transferee, nor their agents, but the company is in default to make the necessary alteration in the share-list, and to complete the transaction, and the enquiry naturally arises, what happens in that case?

It is clear that if neither the vendor nor purchaser is in default they ought not to suffer; yet, if prior to the registration of the transfer in the company's books, proceedings in liquidation are instituted, one of them must be held liable. Where the liquidation or winding up is voluntary, there is very little difficulty, but where it is compulsory and the company is insolvent, the estate is really in the hands of the creditors of the company, and the persons whose names are on the share-list at the initiation of such proceedings, remain, as we have seen, liable to the creditors, and their names cannot be removed. The result of the English decisions unvaryingly is, that the court would order the removal of the vendors name and the substitution of that of the vendee.[3] In Nations case,[4] which is the strongest in point, the transfer was executed and left for registration on the 17th February, but the company omitted to register it, and on the 7th of March a petition for winding up was

[1] The language of that section is:—"A Company shall on the application of the transferor of any share or interest in the Company enter in its register of members the name of the transferee of such share or interest in the same manner and subject to the same conditions as if the application for such entry were made by the transferee. And see also Buckley, note to this section, p. 451.

[2] 1 Q. B. 422.

[3] *Vide*, Ward and Henry's Case, L. R. 2 Ch. Ap. 431; Marino's Case, L. R. 2 Ch. Ap. 596; and Shepherd's Case, L. R. 2 Ch. Ap. 16.

[4] L. R. 3 Eq. 77.

presented. Held, by Lord Romilly, that in the absence of any special reason against the transfer, the directors ought to have registered it on the first occasion of their meeting after the transfer had been deposited; consequently that there had been unnecessary delay, and the transferor was entitled to have his name removed, and that of the transferee substituted.[1]

The difficulty in either of these positions arises from the triangular nature of the transaction. Not only is the consent of the parties, transferor or transferee, but the consent of a third party, the company itself, an essential part of the contract. Not only must the vendor be willing that the purchaser should be substituted in his place and stead, with all his rights and interests as a member, but the company must be willing to accept him as such, and to substitute his name for that of the vendor. This is clearly under section 42 of the present Act,[2] an implied condition of every agreement to sell and accept shares, and without which the transaction will be altogether void, and the parties revert to the position they were in before anything was said or done towards a sale. So that if there is no default on either side there is no liability between the parties *inter se*. For, as very well put by one writer,[3] "It seems inconsistent for the law, on the one hand, to say to the transferor after the commencement of the winding up, you shall not transfer; and on the other hand, to say to the transferee, you shall be bound to accept an invalid transfer, although you contracted with a view of becoming a member of the company. It would be more consistent that, by the occurrence of the winding up, all contracts for the sale and purchase of shares, the time for the performance of which has not yet arrived, should be dissolved, both as between the transferor and the company, and between the transferor and transferee."[4] Where, however,

[1] Digby "Transfer," etc., p. 39.

[2] *Vide supra*, p. 274.

[3] Digby "Transfer," etc,, p. 68.

[4] With regard to the rights of the broker engaged in making these contracts they have, in all the cases I have been able to find, been upheld in so far as they have acted in accordance with the rules of the Stock Exchange to

the registration has not been effected through the fault of the purchaser, he will be held liable for whatever loss the vendor may suffer in consequence, as on any other contract. But where the company itself is in fault, the register will be rectified by the court, and the parties placed in the position they would have occupied but for the company's neglect.[1]

These principles, it appears, are applied also in cases in which the whole contract is entered into after the winding up commenced, but where one or both of the parties were ignorant of the winding up proceedings.

Where both were aware of them however, the result will be according to the ruling in Walker's case[2] that they will be presumed to have been aware that no change of membership could take place; but had agreed, notwithstanding that the purchaser should, on the one hand, make good to the vendor any loss which he might suffer by remaining on the list of shareholders, and the vendor on the other hand account to the purchaser for any moneys which may accrue from a division of surplus assets.

But whatever the rights of the parties among themselves, the rule as regards the creditors of the company is, (and this rule has been recently affirmed in the most unqualified manner by the House of Lords, in two cases arising out of the failure of the City of Glasgow Bank,)[3] that after the stoppage of a company on account of insolvency, and the issue by the directors of a notice concerning a meeting of the shareholders, for the purpose of considering a voluntary winding up, the directors of the company are justified in suspending the registration of all transfers, and the persons whose names appear on the register remain liable to the creditors for everything which may be due in respect of such shares.

Vide, Digby "Transfer," p. 13; Shelford, Joint Stock Co.'s, p. 170.
which they belong; it has been held that they may bring action of *assumpsit* for moneys paid within their powers in furtherance of such contracts.

[1] As to the discretion of the Company in refusing registration, *vide supra*, p. 278.

[2] L. R., 2 Eq 554.

[3] *Vide ante*, p. 282.

CHAPTER VIII.

LOAN COMPANIES.

1. Capital Stock of.
2. Objects and Powers of.
   (*a*) *To what they extend.*
   (*b*) *To be distinguished from Building Societies.*
3. Powers of Directors of Loan Company.
   (*a*) *May borrow money.*
   (*b*) *May receive money on deposit.*
   (*c*) *Provisos.*
   (*d*) *Difference between power to lend and power to borrow.*
   (*e*) *Not to buy stock in other Companies.*
4. Company may hold real estate.
5. May charge commission.
6. May charge interest.
7. Must keep register.
8. May amalgamate with other Loan Companies.
   (*a*) *Power of Directors to that end.*
   (*b*) *Agreement to be submitted to shareholders.*
   (*c*) *Shall form one Corporation.*
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9. To send statement to Finance Minister.
10. Act of 1869 repealed.
   (*a*) *But not to effect applications pending.*
11. Copies of notices to be published.
12. Company shall make returns

1. Capital Stock of.

88. The capital stock of every Loan Company shall be divided into shares of one hundred dollars each.

This and the following sections contain special provisions with regard to loan companies not found in any previous or other Canadian Act. Under these circumstances, it would have been well if something like a definition of what constitutes a loan company had been given. As it is, the meaning of the term loan company must be gathered from a study of the powers accorded to it by the following sections, as stated in sec. 2, s.s. 3.[1] It appears, however, that the capital stock of such a company must not be less than one hundred thousand dollars,[2] nor the shares less than one

[1] *Vide supra*, p. 82.

[2] Sec. 4 s.s. 4, *supra* p. 102.

hundred dollars each. Of this capital, the whole amount must be paid in where it does not exceed a hundred thousand dollars, before a charter can be obtained, and not less than ten per cent. in any case.[1] In all other respects, it will be governed by the rules applicable to joint stock companies generally, subject to its charter and the following provisions.

2. Objects and Powers of.

89. Any Loan Company may, from time to time, lend and advance money, by way of loan or otherwise, for such periods as they may deem expedient, on any real security, or on the public securities of the Dominion, or of any of the Provinces thereof, or on the security of debentures of any municipal or other corporation, issued under or in pursuance of any statutory authority, and upon such terms and conditions as to the Company shall seem satisfactory or expedient; and may acquire, by purchase or otherwise, any security upon which they are authorized to lend or advance money, and may re-sell the same as they may deem advisable,—with power to do all acts that may be necessary for advancing such sums of money and for receiving and obtaining repayment thereof, and for compelling the payment of all interest (if any) accruing from such sums so advanced, and the observance and fulfilment of any conditions annexed to such advance, and the forfeiture of any term or property consequent on the non-fulfilment of such conditions, or of conditions entered into for delay of payment; and to give receipts, acquittances and discharges for the same, either absolutely and wholly or partially, and to execute such deeds, assignments or other instruments as may be necessary for carrying any such purchase or re-sale into effect; and for all and every, and any of the foregoing purposes, and for every and any other purpose in this Act mentioned or referred to, the Company may lay out and apply the capital and property, for the time being, of the Company, or any part thereof, or any of the moneys authorized to be hereafter raised or received by the Company in addition to their capital for the time being, with power to do, authorize and exercise all acts and powers whatsoever, in the opinion of the directors of the Company, requisite or expedient to be done or exercised in relation thereto.

90. The Company are hereby empowered to act as an agency association, and for the interest and on behalf of others who may entrust them with money for that purpose, and either in the name of the Company or of such others, to lend and advance money to any person or persons, upon such securities as are mentioned in the last preceding section, or to any body or bodies corporate whomsoever, or to any municipal or other authority, or any board or body of trustees or commissioners whatsoever, upon such terms and upon such security as to the Company shall appear satis-

[1] Sec. 5 s.s. 4, *supra* p. 117.

factory, and to purchase and acquire any securities on which they are authorized to advance money, and again to re-sell the same; and the conditions and terms of such loans and advances, and of such purchases and re-sales may be enforced by the Company for their benefit, and for the benefit of the person or persons or corporation for whom such money has been lent and advanced, or such purchase and re-sale made; and the Company shall have the same power in respect of such loans, advances, purchases and sales made from their own capital; and they may also guarantee the repayment of the principal or the payment of the interest, or both, of any moneys entrusted to the Company for investment, and for all or every or any of the foregoing purposes, may lay out and employ the capital and property, for the time being, of the Company, or any part of the moneys authorized to be raised by the Company, in addition to their capital for the time being, or any moneys so entrusted to them as aforesaid, and may do, assent to, and exercise all acts whatsoever, in the opinion of the directors of the Company for the time being, requisite or expedient to be done in [illegible] interest; and moneys of which the repayment of the principal or payment of interest is guaranteed by the Company, shall for the purposes of this Act be deemed to be money borrowed by the Company.

(*a*) *To what they extend.*—These two sections embody the main objects and business of such a company, viz: to invest money, either their own or others, by way of loans, *or otherwise* on interest. The words "or otherwise" though adding an element of vagueness to the description of the powers of the company, are apparently inserted to cover investments on bonds, debentures, etc., which investments though really a loan to the issuer of the bonds, or debentures, is effected, nevertheless, by a purchase of such securities for the period agreed upon. They would not, however, apparently cover advances on moveables or merchandize, of which the value is uncertain and speculative, but would be confined to the classes of securities mentioned in the section, and usually described as interest bearing securities. Nor would they cover investment in manufacturing or other enterprises, except by way of loan at interest to the individual or company carrying them on. The legality of any investment by such a company would probably be decided by the circumstance of its bearing interest at a regularly stated or understood rate or not.

(*b*) *To be distinguished from building societies.*—They are to be distinguished also from building societies which are

conducted upon a different system, though for a somewhat different object. By the Imperial Building Societies Act, 1874, a building society is described in these words[1]: "Any number of persons may establish a building society under this Act, either terminating or permanent, for the purpose of raising by the subscription of the members a stock or fund for making advances *to members* out of the funds of the society, upon the security of freehold, copyhold, or leasehold estate by way of mortgage, and any security under this Act shall, so far as is necessary for the said purpose, have power to hold land with the right of foreclosure, and may from time to time raise funds by the issue of shares of one or more denominations, either paid up in full or in periodical or other subscriptions, and with or without accumulating interest, and may repay such funds when no longer required for the purposes of the society. Provided always that any land to which any such society may become absolutely entitled by foreclosure, or by surrender or other extinguishment of the right of redemption, shall, as soon afterwards as may be conveniently practicable be sold or converted into money." And *in re* Kent Benefit Building Society[2] Kindersly, V.C., stated the object of such society to be "that any individual member may borrow money from the society to enable him to buy or build a house, mortgaging it to the society as security for the money borrowed, and ultimately making it absolutely his own by paying off the mortgage out of his subscription." A building society also differs in this, that the subscriptions are so much, weekly or monthly, instead of by the purchase of shares subject to calls.

3. Powers of Directors of Loan Company.

(*a*) *May borrow money.*—

91. Subject to the conditions and provisions hereinafter made, the directors may, from time to time, with the consent of the Company in general meeting, borrow money on behalf of the Company, at such rates of interest as may be lawful under section ninety-seven of this Act, and upon

[1] Brice, *ultra vires*, 2nd Ed., p. 238.
[2] 1 Dr. & Sm. 417, and Brice, *Ibid.*

such terms as they may, from time to time, think proper; and the Directors may, for that purpose, execute any debentures, mortgages, bonds or other instruments, under the common seal of the Company, for sums of not less than one hundred dollars or twenty pounds sterling each, or assign, transfer or deposit, by way of equitable mortgage or otherwise, for the sums so borrowed, any of the documents of title, deeds, muniments, securities or property of the Company, and either with or without power of sale or other special provisions, as the directors shall deem expedient.[1]

(*b*) *May receive money on deposit.*—

92. Subject to the conditions and provisions hereinafter made, the directors may, from time to time, with the consent of the Company at a general meeting, receive money on behalf of the Company on deposit for such periods and at such rate of interest as may be agreed upon; and money so received on deposit shall, for the purposes of this Act, be deemed to be money borrowed by the Company.

(*c*) *Provisos.*—

93. Provided always,—

1. That the Company shall not borrow money unless at least one hundred thousand dollars of its subscribed capital stock has been paid up;

2. That the Company shall not borrow money unless at least twenty per cent. of its subscribed capital stock has been paid up;

3. That if the Company borrow money by way of deposit, under the ninety-second section, the aggregate amount of the sums so borrowed by way of deposit, shall not at any time, whether the Company borrows solely by way of deposit or also in other ways, exceed the aggregate amount of its paid up capital, and of its other cash actually in hand, or deposited by it in any chartered bank or banks in Canada;

4. That if the Company borrow money solely on the debentures or other securities mentioned in the ninety-first section and by guarantee under the ninetieth section, and not by way of deposit under the ninety-second section, the aggregate amount of the sums so borrowed shall not, at any time, exceed four times the amount of its paid up and unimpaired capital, or the amount of its subscribed capital, at the option of the Company;

5. That if the Company borrow money both by way of debentures or other securities or by guarantee, as aforesaid, and also by way of deposit, then the aggregate of money so borrowed shall not at any time exceed the amount of the principal moneys remaining unpaid on securities then held by the Company, nor shall it exceed double the amount of the then actually paid up and unimpaired capital of the Company;

[1] Compare sec. 85, *supra* p. 386.

but the amount of cash then actually in the hands of the Company, or deposited by them in any chartered bank, or bot[illegible], shall be deducted from the aggregate amount of the liabilities which the Company has then incurred, as above mentioned, in calculating such aggregate amount for the purposes of this section.

6. Provided always, that in the case of any Company, now incorporated, availing itself of the provisions of this Act for the purpose of enlarging its powers to borrow money by debentures, nothing herein contained shall be construed as affecting or in any wise impairing the right of the holders of debentures issued by the said Company.

(*d*) *Difference between power to lend and power to borrow.*—It will be observed that there is a difference between the wording of these sections conferring a power to borrow, and that of the preceding ones, referring to the power to lend. In reference to the power to lend, it is simply stated that "the company may," or "the company is empowered," but in reference to the power to borrow "the directors may, with the consent of the company in general meeting." The difference intended, apparently is that, lending being the real object and business of the company, the making of loans is an act of ordinary administration, and may therefore be undertaken and carried through by the directors without the consent of a general meeting especially had for that purpose. But the act of borrowing not being part of the ostensible business of the company is only to be undertaken under certain circumstances—as, for instance, when the funds of the company are insufficient for the requirements of its business—and with the consent of a general meeting.[1] The same is also the case with the power to receive money on deposit, which is in effect a loan to the company.[2]

(*e*) *Not to buy Stock in other Companies.*—

24. The Company shall not [illegible] its funds in the purchase of stock in any other [illegible]

[1] With regard to this distinction *vide supra*, p. 205.

[2] *Vide* sec. 42 *infra*.

[3] With regard to the power of a Company to deal in the stock of other Companies *vide supra* p. [illegible]

4. Company may hold Real Estate.

25. The Company may hold such real estate as may be necessary for the transaction of their business, not exceeding in yearly value the sum of ten thousand dollars in all, or as being mortgaged or hypothecated to them, may be acquired by them for the protection of their investments, and may, from time to time, sell, mortgage, lease or otherwise dispose of the same: Provided always, that it shall be incumbent upon the Company to sell any real estate acquired in satisfaction of any debt within seven years after it shall have been so acquired, otherwise it shall revert to the previous owner, or his heirs or assigns.

This is in accordance with section 10,[1] and the general rules concerning the power of companies to hold real estate, and establishes with sufficient clearness that a company formed under these provisions cannot acquire real property for the purpose of investment or speculation.

5. May charge Commission.

26. The Company when acting as an agency association, may charge such commission to the lender or borrower, or both, upon the moneys invested on their behalf as may be agreed upon, or as may be reasonable in that behalf.

6. May charge Interest, etc.

27. The Company may stipulate for, take, reserve and exact any rate of interest or discount that may be lawfully taken by individuals, or in the Province of Quebec by incorporated Companies under like circumstances, and may also receive an annual payment on any loan by way of a sinking fund for the gradual extinction of such loan, upon such terms and in such manner as may be regulated by the by-laws of the Company: Provided always that no fine or penalty shall be stipulated for, taken, reserved or exacted in respect of arrears of principal or interest, which shall have the effect of increasing the charge in respect of arrears beyond the rate of interest or discount on the loan.

7. Must keep Register.

28. A register of all securities held by the Company shall be kept; and within fourteen days after the taking of any security, an entry or memorial specifying the nature and amount of such security, and the names of the parties thereto, with their proper additions, shall be made in such register.[2]

[1] *Vide supra*, p. 126.

[2] *Vide*, p. 223 *supra*, as to books to be kept by ordinary company.

8. May Amalgamate with other Loan Companies.

99. It shall be lawful for the Company to unite, amalgamate and consolidate its stock, property, business and franchises with those of any other company or society incorporated or chartered to transact a like business, and any other business in connection with such business, or any building, savings or loan company or society heretofore or hereafter incorporated or chartered, or to purchase and acquire the assets of any such company or society, and to enter into all contracts and agreements therewith necessary to such union, amalgamation, consolidation, purchase or acquisition.

(*a*) *Power of Directors to that end.*—

100. The directors of the Company, and of any other such company or society, may enter into a joint agreement under the corporate seals of each of the said corporations, for the union, amalgamation or consolidation of the said corporations, or for the purchase and acquisition by the Company of the assets of any other such company or society, prescribing the terms and conditions thereof, the mode of carrying the same into effect, the name of the new corporation, the number of the directors and other officers thereof, and who shall be the first directors and officers thereof, the manner of converting the capital stock of each of the said corporations into that of the new corporation, with such other details as they shall deem necessary to perfect such new organization, and the union, amalgamation and consolidation of the said corporations, and the after management and working thereof, or the terms and mode of payment for the assets of any other such company or society purchased or acquired by the company.

(*b*) *Agreement to be submitted to Shareholders.*

101. Such agreement shall be submitted to the shareholders of each of the said corporations at a meeting thereof to be held separately for the purpose of taking the same into consideration. Notice of the time and place of such meetings, and the objects thereof shall be given by written or printed notices, addressed to each shareholder of the said corporations respectively, at his last known post office address or place of residence, and also by a general notice to be published in a newspaper published at the chief place of business of such corporations, once a week, for six successive weeks. At such meetings of shareholders such agreement shall be considered, and a vote by ballot taken for the adoption or rejection of the same,—each share entitling the holder thereof to one vote, and the said ballots being cast in person or by proxy; and if two-thirds of the votes of all the shareholders of such corporations shall be for the adoption of such agreement, then that fact will be certified upon the said agreement by the secretary of each of such incorporations, under the corporate seals thereof; and if the said agreement shall be so adopted at the respective meetings of the shareholders of each of the said corporations, the agreement so adopted and the said certificates thereon shall be filed in the office of the Secretary

of State of Canada, and the said agreement shall, from thenceforth, be taken and deemed to be the agreement and act of union, amalgamation and consolidation of the said corporations, or the agreement and deed of purchase and acquisition by the Company of the assets of such company so selling, as the case may be; and a copy of such agreement so filed, and of the certificates thereon properly certified, shall be evidence of the existence of such new corporation: Provided, nevertheless, that due proof of the foregoing facts shall be laid before the Governor in Council, and, if deemed expedient by the Governor in Council, letters patent shall be issued and notice thereof duly published by the Secretary of State in the *Canada Gazette*,—after which the new corporation may transact business.

(*c*) *Shall form one corporation.*

102. Upon the making and perfecting of the said agreement and act of consolidation, as provided in the next preceding section, the several societies, parties thereto, shall be deemed and taken to be consolidated, and to form one corporation by the name in the said agreement provided with a common seal, and shall possess all the rights, privileges and franchises of such corporations.

(*d*) *Effects of as to assets, etc.*

103. Upon the consummation of such act of consolidation as aforesaid, all and singular the business, property, real, personal and mixed, and all rights and incidents appurtenant thereto, all stock, mortgages or other securities, subscriptions and other debts due on whatever account, and other things in action belonging to such corporations or either of them, shall be taken and deemed to be transferred to and vested in such new corporation without further act or deed: Provided, however, that all rights of creditors and liens upon the property of either of such corporations shall be unimpaired by such consolidation, and all debts, liabilities and duties of either of the said corporations shall thenceforth attach to the new corporation, and be enforced against it to the same extent as if the said debts, liabilities and duties had been incurred or been contracted by it; and provided also that no action or proceeding, legal or equitable, by or against the said corporations so consolidated, or either of them, shall abate or be affected by such consolidation, but for all the purposes of such action or proceeding such corporation may be deemed still to exist, or the new corporation may be substituted in such action or proceeding in the place thereof.[1]

9. To Send Statement to Finance Minister.

104. The Company shall transmit on or before the first day of March in each year to the Minister of Finance a statement in duplicate, to the thirty-first day of December inclusive of the previous year, verified by the oath of their President or Vice-President and Manager, setting out the

[1] With regard to Amalgamation generally *vide supra*, p. 137.

capital stock of the Company, and the proportion thereof paid up, the assets and liabilities of the Company, the amount and nature of the investments made by the Company, both on their own behalf and on behalf of others, and the average rate of interest derived therefrom, distinguishing the classes of securities, and also the extent and value of the lands held by them, under the ninety-fifth section: and such other details as to the nature and extent of the business of the Company as may be required by the Minister of Finance; and in such form and with such details as the said Minister may from time to time require and prescribe: Provided always that in no case shall the Company be bound to disclose the names or private affairs of any person who may have dealings with them.

10. Act of 1869 Repealed.

105. "*The Canada Joint Stock Companies Letters Patent Act*, 1869," is hereby repealed, in so far as regards the formation or incorporation hereafter, by virtue of any of the provisions thereof, of any Company, the incorporation of which is subject to the control of the Parliament of Canada; but every such Company heretofore incorporated by virtue of that Act or of any of the Acts thereby repealed, shall so remain; and no provision of such Acts shall, as touching any such Company, be in anywise affected by this Act.[1]

(*a*) *But not to affect Application Pending.*—

And every application for the incorporation of any Company, the incorporation of which is subject to the control of the Parliament of Canada, pending at the time of the passing of this Act, under "*The Canada Joint Stock Companies' Letters Patent Act*, 1869," may be proceeded with, and the incorporation may be obtained by virtue thereof, as though this Act had not been passed.

11. Copies of Notices to be Published.

106. A copy of every notice of issue of letters patent or supplementary letters patent which, under the provisions of this Act, the Secretary of State is required to insert in the *Canada Gazette*, shall forthwith, after such insertion, be, by the Company to which such notice relates, inserted on four several occasions in at least one newspaper in the county, city or place where the head office or chief agency is established.

12. Company shall make Returns.

107. Every corporation or institution incorporated without the limits of Canada, which has been or may be authorized, under the provisions of the Act passed in the thirty-seventh year of Her Majesty's reign, chaptered forty-nine, to lend and invest money in Canada, shall, by the agent or manager in Canada, make returns to the Minister of Finance, of all the business done by it in Canada, at the same time and in the same manner as if such corporation or institution had been incorporated under the provisions of this Act.

[1] *Vide supra*, p. 160.

SCHEDULES.

SCHEDULE A.

Public notice is hereby given, that under *The Canada Joint Stock Companies Act*, 1877, letters patent have been issued under the great seal of the Dominion of Canada, bearing date the day of incorporating [*here state names, address and calling of each corporator named in the letters patent*], for the purpose of [*here state the undertaking of the Company, as set forth in the letters patent*], by the name of [*here state name of the Company, as in letters patent*], with a total capital stock of dollars, divided into shares of dollars.

Dated at the office of the Secretary of State of Canada, this day of 18

A. B.,
Secretary.

SCHEDULE B

Public notice is hereby given, that under *The Canada Joint Stock Companies Act*, 1877, supplementary letters patent have been issued under the great seal of the Dominion of Canada, bearing date the day of whereby the total capital stock of [*here state the name of the Company*] is increased [*or* decreased, *as the case may be*] from dollars to dollars.

Dated at the office of the Secretary of State of Canada this day of 18

A. B.,
Secretary.

SCHEDULE C.

Public notice is hereby given, that under *The Canada Joint Stock Companies' Act*, 1877, supplementary letters patent have been issued under the great seal of the Dominion of Canada, bearing date the day of , whereby the undertaking of the Company has been extended to include [*here set out the other purposes or objects mentioned in the supplementary letters patent*].

Dated at the office of the Secretary of State of Canada this day of 18

A. B.,
Secretary.

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ADDITIONAL FORMS

IN CONNECTION WITH THE ORGANIZATION AND MANAGEMENT OF A COMPANY.

No. 1.

PROSPECTUS OF THE MONTREAL MANUFACTURING COMPANY.

CAPITAL, $100,000, *IN* 1000 *SHARES OF* $100 *EACH.*

PROVISIONAL DIRECTORS:

JOHN SMITH, Esq., Montreal; THOMAS BROWN, Esq., Toronto; WILLIAM JONES, Esq., Montreal; JAMES ROBINSON, Esq., Toronto.

SECRETARY:

JAMES THOMPSON.

BANKERS:

THE BANK OF MONTREAL.

The Montreal Manufacturing Company is formed for the purpose of carrying on the business of manufacturing in all its branches.

Owing to the largely increased demand for this article as compared with any previous period, and the facilities which this city affords for its manufacture, a profit of at least 20 per cent is assured.

For this purpose the Company propose to erect on street, in Montreal, a building capable of turning out gross per month—the maximum cost of said building to be $15,000, and to be furnished with all the latest improvements in use in this manufacture.

In order to push sales it is proposed to establish agencies in various parts of the Dominion, a charter to be obtained, and the Company to commence business as soon as one-half of the proposed capital stock is *bona fide* subscribed.

Applications for shares may be addressed in the following form, and accompanied by a deposit of ten per cent to the Secretary at the office of the Company, No. street.

TO THE DIRECTORS OF THE MONTREAL MANUFACTURING CO., (LIMITED.)

Be pleased to allot me ten shares in this Company, on account of which I have deposited the sum of $100 to the account of the Company at the Bank of Montreal, Montreal.

Shares applied for in this way should be allotted, and the applicant notified of such allotment in a brief form as follows:—

FORM NO. 2.

THE MONTREAL MANUFACTURING CO., (LIMITED.)

OFFICE, No. STREET, MONTREAL.

SIR,—The Directors have this day allotted to you ten shares in the Company according to the terms of your application.

Montreal, August 1880.

FORM NO. 3.

PROXY.

MONTREAL MANUFACTURING CO., (LIMITED.)

I, John Smith, of Montreal, in the district of Montreal, being a member of the Montreal Manufacturing Company, (limited,) hereby appoint Thos. Jones, of Montreal, to vote for me and on my behalf at the (ordinary *or* extraordinary, as the case may be) general meeting of theCompany to be, held on the day of and at any adjournment there of (*or* at any meeting of the Company that may be held in the year.)

Witness my hand this day of

Signed in presence of

FORM NO. 4.

CERTIFICATE OF SHARES.

The Montreal Manufacturing Company, (limited,) incorporated on the day of

No.

This is to certify that A. B. of is the proprietor of the share No. of the Montreal Manufacturing Company, (limited,) subject to the regulations of the said Company, and that up to this day there has been paid in respect of such share the sum of $

Given under the common seal of the said Company the day of 18

(Signature of two directors.) Sec.

FORM NO. 5.

TRANSFER OF SHARES.

In this country no form of transfer is ordinarily used, but in England, where the custom is for the parties to sign a deed or document the following form is given :--

I, A. B., of in consideration of the sum of $ paid to me by C. D., of do hereby transfer to the said C. D. shares in the Company standing in my name in the books of the Company to have and to hold unto the said C. D., his executors, administrators and assigns, subject to the several conditions on which I held the same at the time of the execution thereof. And I, the said C. D. do hereby agree to take the said shares subject to the same condition.

As witness our hands and seals the day of 18

FEES PAYABLE ON APPLICATION FOR LETTERS PATENT AND SUPPLEMENTARY LETTERS PATENT UNDER THE CANADA JOINT STOCK COMPANIES ACT, 1877.

By order of the 22nd day of October, 1877, His Excellency in Council directed that the following tariff of fees to be paid on application for Letters Patent and Supplementary Letters Patent under the Canada Joint Stock Companies Act 1877, be, and the same was adopted, that is to say :—

When the proposed capital stock of the company is $500,000 and upwards the fee to be.....	$200.00
When the proposed capital stock is $200,000 and upwards, but less than $500,000.....	150.00
When the proposed capital stock is $100,000 or upwards, but less than $200,000.....	100.00
When the proposed capital stock is less than $100,000..	50.00

On application for supplementary letters patent the fee to be one-half of that charged on the original letters patent.

His Excellency was also pleased to order that the department of the Secretary of State be, and the same was designated as that, through which the issue of letters patent or supplementary letters patent shall take place.

His Excellency was also pleased to order that the forms of proceeding and record prescribed by the Act in reference to the issuing of letters patent be for the present adopted.[1]

[1] *Canada Gazette*, Vol. II., p. 441.

DOMINION AND LOCAL ACTS.

DOMINION AND LOCAL ACTS OF A GENERAL NATURE STILL IN FORCE IN CANADA RESPECTING THE INCORPORATION, ETC., OF JOINT STOCK COMPANIES.

THE CANADA JOINT STOCK COMPANIES' CLAUSES ACT.

(32 & 33 VIC., CAP. 12.)

Assented to June 22nd, 1869.

Her Majesty, by and with the consent of the House of Commons of Canada, enacts as follows:

1. This Act may be quoted as the Canada Joint Stock Companies' Clauses Act, 1869.

2. The following words and expressions, both in this and the Special Acts, shall have the meanings hereby assigned to them, unless there is something in the subject or context repugnant to such construction; that is to say:

1. The expression, "The Special Act," used in this Act, shall be construed to mean any Act incorporating a company to which this Act applies, and with which this Act is incorporated, as hereinafter provided; and also all Acts amending such Act;

2. The expression "the company," shall mean the company incorporated by the Special Act;

3. The expression, "the undertaking," shall mean the whole of the works and business of whatever kind which the company is authorized to undertake to carry on.

4. The expression "Real Estate," or "Land," shall include all real estate, messuages, lands, tenements, and hereditaments of any tenure.

5. The word "Shareholder" shall mean every subscriber to or holder of stock in the company, and shall extend to and include the personal representative of the shareholder.

3. The provisions of this Act shall apply to every Joint Stock Company hereafter to be incorporated by any special Act of the Parliament of Canada for any of the purposes or objects to which the legislative authority of the Parliament of Canada extends,[1] except companies for the construction and working of railways or the business of banking and the issue of paper money, or insurance, and shall, so far as they are applicable to the undertaking, and are not expressly varied or excepted by the special Act, be incorporated with it, and form part thereof, and shall be construed therewith as forming one Act.

4. For the purpose of excepting from incorporation with the Special Act any of the provisions of this Act, it shall be sufficient in the Special Act to enact that the sections and sub-sections of this Act proposed to be excepted (referring to them by the number they may bear), shall not be incorporated with such Act, and the Special Act shall thereupon be construed accordingly.

5. Every Company incorporated under any Special Act shall be a body corporate under the name declared in the Special Act, and may acquire, hold, alienate, and convey any real estate necessary or requisite for the carrying on of the undertaking of such Company, and shall be invested with all the powers, privileges and immunities necessary to carry into effect the intentions and objects of this Act and of the Special Act, and which are incident to such corporation, or expressed or included in the interpretation Act.

6. All powers given by the Special Act to the Company shall be exercised, subject to the provisions and restrictions contained in this Act, except such only as are by the Special Act expressly excepted from incorporation with it.

7. The affairs of the Company shall be managed by a Board of not less than three, nor more than nine directors.[2]

8. The persons named as such in the Special Act shall be the directors of the Company until replaced by others duly named in their stead.

9. No person shall be elected or named as director thereafter, unless he is a shareholder holding stock absolutely in his own right, and not in arrear in respect of any call thereon; and the major part of the after directors of the company shall at all times be persons resident in Canada and subjects of Her Majesty by birth or naturalization.

10. The after directors of the Company shall be elected by the shareholders in general meeting of the Company assembled at such times, in such wise, and for such term, not exceeding two years, as the Special Act, or (in default thereof) the by-laws of the Company may prescribe.

[1] *Vide supra*, p. 83, as to legislative authority of Parliament.

[2] Under the General Act the margin is between three and fifteen, *Vide supra*, p. 102.

11. In default only of other express provisions in such behalf by the Special Act or by-laws of the Company—such election shall take place yearly—all the members of the Board retiring, and (if otherwise qualified) being eligible for re-election.

2. Notice of the time and place for holding general meetings of the Company shall be given at least ten days previously thereto in some newspaper published at or as near as may be to the place in which the office or chief place of business of the Company is situated;

3. At all general meetings of the Company every shareholder shall be entitled to as many votes as he owns shares in the Company, and may vote by proxy;

4. Elections of Directors shall be by ballot;

5. Vacancies occurring in the Board of Directors may be filled for the unexpired remainder of the term by the Board from among the qualified shareholders of the Company.

6. The directors shall from time to time elect from among themselves a President of the Company; and shall also name, and may remove at pleasure, all other officers thereof.

12. If at any time an election of directors be not made, or do not take effect at the proper time, the Company shall not be held to be thereby dissolved; but such election may take place at any general meeting of the Company duly called for that purpose, and the retiring directors shall continue in office until their successors are elected.

13. The directors of the Company shall have full power in all things to administer the affairs of the Company, and may make, or cause to be made for the Company any description of contract which the Company may by law enter into; and may from time to time make by-laws not contrary to law, nor to the Special Act, nor to this Act, to regulate the allotment of stock, the making of calls thereon, the payment thereof, the issue and registration of certificates of stock, the forfeiture of stock for non-payment, the disposal of forfeited stock and of the proceeds thereof, the transfer of stock, the declaration and payment of dividends, the number of the directors, their term of service, the amount of their stock qualification, the appointment, functions, duties and removal of all agents, officers, and servants of the Company, the security to be given by them to the Company, their remuneration and that (if any) of the directors, the time at which and place where the annual meetings of the Company shall be held, the calling of meetings, regular and special, of the Board of Directors and of the Company, the quorum, the requirements as to proxies, and the procedure in all things at such meetings, the imposition and recovery of all penalties and forfeitures admitting of regulation by by-law, and the conduct in all other particulars of the affairs of the Company; and may, from

time to time, repeal, amend or re-enact the same; but every such by-law, and every repeal, amendment or re-enactment thereof, unless in the meantime confirmed at a general meeting of the Company, duly called for that purpose, shall only have force until the next annual meeting of the Company, and in default of confirmation thereat, shall, at and from that time only, cease to have force; Provided always, that one-fourth part in value of the shareholders of the Company shall at all times have the right to call a special meeting thereof for the transaction of any business specified in such written requisition and notice as they may issue to that effect.

14. A copy of any by-law of the Company, under their seal, and purporting to be signed by any officer of the Company, shall be received as *prima facie* evidence of such by-law in all Courts of Law or Equity in Canada.

15. The stock of the Company shall be deemed personal estate, and shall be transferable, in such manner only, and subject to all such conditions and restrictions as by this Act or by the Special Act or by-laws of the Company, shall be prescribed.

16. If the Special Act makes no other definite provision, the stock thereof shall be allotted when and as the directors, by by-law or otherwise, may ordain.

17. The directors of the Company may call in and demand from the shareholders thereof, respectively, all sums of money by them subscribed at such times and places, and in such payments or instalments as the Special Act, or as this Act may require or allow, and interest shall accrue and fall due at the rate of six per centum per annum upon the amount of any unpaid call from the day appointed for payment of such call.

18. Not less than ten per centum upon the allotted stock of the Company shall by means of one or more calls be called in and made payable within one year from the incorporation of the Company, and for every year thereafter, at least a further ten per centum shall in like manner be called in and made payable until the whole shall have been so called in.

19. The Company may enforce payment of all calls and interest thereon by action in any competent Court, and in such action it shall not be necessary to set forth the special matter, but it shall be sufficient to declare that the defendant is a holder of one share or more, stating the number of shares, and is indebted in the sum of money to which the calls in arrear amount, in respect of one call or more upon one share or more, stating the number of calls and the amount of each, whereby an action hath accrued to the Company under this Act; and a certificate under their seal, and purporting to be signed by any officer of the company, to the effect that the defendant is a shareholder, that such call or calls has or have been made, and that so much is due by him and unpaid thereon, shall be received as against the defendant in all Courts as *prima facie* evidence to that effect.

0. If, after such demand or notice as by the Special Act or by-laws of the Company may be prescribed, any call made upon any share or shares be not paid within such time as by such Special Act or by-laws may be limited in that behalf, the directors, in their discretion, by vote to that effect, reciting the facts, and duly recorded in their minutes, may summarily forfeit any shares whereon such payment is not made, and the same shall thereupon become the property of the Company and may be disposed of as by the by-laws, or otherwise, they shall ordain.

21. No share shall be transferable until all previous calls thereon have been fully paid in, or until declared forfeited for non-payment of calls thereon.

22. No shareholder being in arrear in respect of any call shall be entitled to vote at any meeting of the Company.

23. The Company shall cause a book, or books, to be kept by the Secretary, or by some other officer, especially charged with that duty, wherein shall be kept recorded,

1. The names, alphabetically arranged, of all persons who are or have been shareholders ;

2. The address and calling of every such person, while such shareholder ;

3. The number of shares of stock held by each shareholder ;

4. The amounts paid in and remaining unpaid, respectively, on the stock of each shareholder ;

5. All transfers of stock in their order as presented to the Company for entry with the date and other particulars of each transfer, and—

6. The names, addresses and calling of all persons who are or have been directors of the Company, with the several dates at which each ever became or ceased to be such director.

24. The directors may refuse or allow the entry into any such book of any transfer of stock, whereof the whole amount has not been paid in, and whenever entry is made into such book of any transfer of stock not fully paid in to a person not being apparently of sufficient means the directors jointly and severally shall be liable to the creditors of the Company in the same manner, and to the same extent as the transferring shareholder, but for such entry would have been ; but if any director present when such entry is allowed, do forthwith, or if any director then absent, do within twenty-four hours after he shall have become aware thereof and able so to do, enter on the minute book of the Board of Directors his protest against the same, and do within eight days thereafter publish such protest in at least one newspaper published at or as near as may be possible to the place in which the office or chief place of business

of the Company is situated, such director may thereby, and not otherwise, exonerate himself from such liability.

25. No transfer of stock unless made by sale under execution shall be valid for any purpose whatever, save only as exhibiting the rights of the parties thereto towards each other, and as rendering the transferee liable *ad interim* jointly and severally with the transferor to the Company and their creditors until the entry thereof had been duly made in such book or books.

26. Such books shall during reasonable business hours of every day, except Sundays and holidays, be kept open for the inspection of shareholders and creditors of the Company and their personal representatives at the office or chief place of business of the Company, and every such shareholder, creditor, or representative, may make extracts therefrom.

27. Such books shall be *prima facie* evidence of all facts purporting to be thereby stated in any suit or proceeding against the Company, or against any shareholder.

28. Every director, officer, or servant of the Company, who knowingly makes, or assists to make, any untrue entry in any such book, or who refuses or neglects to make any proper entry therein, or to exhibit the same, or to allow the same to be inspected, and extracts to be taken therefrom, is guilty of a misdemeanor, and being convicted thereof, shall be punished accordingly.

29. Every Company neglecting to keep such book or books open for inspection as aforesaid shall forfeit its corporate rights.

30. The Company shall not be bound to see to the execution of any trust, whether express or implied, or constructive in respect of any share, and the receipt of the shareholder in whose name the same may stand in the books of the Company shall be a valid and binding discharge to the Company for any dividend or money payable in respect of such share, and whether or not notice of such trust shall have been given to the Company; and the Company shall not be bound to see to the application of the money paid upon such receipt.

31. Every contract, agreement, engagement or bargain made, and every bill of exchange drawn, accepted or endorsed, and every promissory note and cheque made, drawn or endorsed on behalf of the Company, by any agent, officer or servant of the Company, in general accordance with his powers as such under the by-laws of the Company, shall be binding upon the Company; and in no case shall it be necessary to have the seal of the Company affixed to any such contract, agreement, engagement, bargain, bill of exchange, promissory note or cheque, or to prove that the same was made, drawn, accepted or endorsed, as the case may be, in pursuance of any by-law or special vote or order; nor shall the party so acting as agent, officer or servant of the Company be thereby subjected individually to any

liability whatsoever to any third party therefor; Provided always that nothing in this Act shall be construed to authorize the Company to issue any note payable to the bearer thereof, or any promissory note intended to be circulated as money, or as the note of a bank, or to engage in the business of banking or insurance.

32. No Company shall use any of its funds in the purchase of stock in any other corporation, unless in so far as such purchase may be specially authorized by the Special Act, and also by the Act creating such other corporation.

33. Each shareholder, until the whole amount of his stock has been paid up, shall be individually liable to the creditors of the Company to an amount equal to that not paid thereon, but shall not be liable to an action therefor by any creditor before an execution against the Company has been returned unsatisfied in whole or in part; and the amount due on such execution shall be the amount recoverable with costs against such shareholders.

34. The shareholders of the Company shall not as such be held responsible for any act, default, or liability, whatsoever of the Company, or for any engagement, claim, payment, loss, injury, transaction, matter, or thing, whatsoever relating to or connected with the Company beyond the amount of their respective shares in the capital stock thereof.

35. No person holding stock in the Company as an executor, administrator, tutor, curator, guardian, or trustee, shall be subject personally to liability as a shareholder; but the estates and funds in the hands of such person shall be liable in like manner, and to the same extent as the testator or intestate, or the minor, ward or interdicted person, or the person interested in such trust fund would be, if living and competent to act and holding such stock in his own name; and no person holding such stock as collateral security shall be personally subject to such liability; but the person pledging such stock shall be considered as holding the same, and shall be liable as a shareholder accordingly.

36. Every such executor, administrator, tutor, curator, guardian or trustee, shall represent the stock in his hands at all meetings of the Company, and may vote accordingly as a shareholder, and every person who pledges his stock may nevertheless represent the same at all such meetings, and may vote accordingly as a shareholder.

37. If the directors of the Company declare and pay any dividend when the Company is insolvent, or any dividend the payment of which renders the Company insolvent, or diminishes the capital stock thereof, they shall be jointly and severally liable as well to the Company as to the individual, shareholders and creditors thereof, for all the debts of the Company then existing, and for all thereafter contracted during their continuance in office respectively; but if any director present when such dividend is declared do forthwith, or if any director then absent do within twenty-four hours

after he shall have become aware thereof, and able so to do enter on the minutes of the Board of Directors his protest against the same, and within eight days thereafter publish such protest in at least one newspaper published at or as near as may be possible to the place in which the office or chief place of business of the Company is situated, such director may thereby, and not otherwise, exonerate himself from such liability.

38. No loan shall be made by the Company to any shareholder, and if such be made all directors and other officers of the Company making the same, or in any wise assenting thereto, shall be jointly and severally liable to the Company for the amount of such loan, and also to third parties to the extent of such loan, with legal interest for all debts of the Company contracted from the time of making such loan to that of the repayment thereof.

39. The directors of the Company shall be jointly and severally liable upon every written contract and undertaking, of the Company on the face whereof the word "Limited," or the words "Limited Liability," are not distinctly written or printed after the name of the Company, where first occurring in such contractors' undertaking.

40. The directors of the Company shall be jointly and severally liable to the laborers, servants and apprentices thereof, for all debts not exceeding one years wages, due for service performed for the Company, while they are such directors respectively; but no director shall be liable to an action therefor within one year after the debt becomes due, nor yet, unless such director is sued therefor within one year from the time when he ceased to be such director, nor yet before an execution against the Company has been returned unsatisfied in whole or in part, and the amount due on such execution shall be the amount recoverable with costs against such directors.

41. Service of all manner of summons or writ whatever upon the Company may be made by leaving a copy thereof at the office or chief place of business of the Company, with any grown person in charge thereof, or elsewhere with the President or Secretary thereof; or if the Company have no known office or chief place of business and have no known President or Secretary, then upon return to that effect duly made, the Court shall order such publication as it may deem requisite to be made in the premises, for at least one month in at least one newspaper, and such publication shall be held to be good service upon the Company.

42. Any description of action may be prosecuted and maintained between the Company, and any shareholder thereof; and no shareholder, not being himself a party to such suit, shall be incompetent as a witness therein.

43. The Company shall be subject to such other and further provisions as Parliament may hereafter deem expedient.

44. The Company shall be subject to the provisions of any general Act of this or any future session for the winding up of the Joint Stock Company.

AN ACT RESPECTING JOINT STOCK COMPANIES TO CONSTRUCT WORKS TO FACILITATE THE TRANSMISSION OF TIMBER DOWN RIVERS AND STREAMS.

(Con. Stat. Can., Cap. 68).

Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:—

1. Any number of persons, not less than five, may form themselves into a Company, under the provisions of this Act, for the purpose of acquiring or constructing and maintaining any dam, slide, pier, boom, or other work necessary to facilitate the transmission of timber down any river or stream in this Province, and for the purpose of blasting rocks, or dredging or removing shoals, or other impediments or otherwise, of improving the navigation of such streams for the said purpose.

2. Each share in the Company shall be twenty dollars, and shall be regarded as personal property, and shall be transferable upon the books of the Company in the manner, to be provided by a by-law, to be made by the Directors in that behalf.

3. No such Company shall construct any such works over or upon or otherwise, interfere with or injure any private property, or the property of the crown without first having obtained the consent of the owner or occupier thereof, or of the crown, except as hereinafter provided.

4. No such Company shall be formed, under the provisions of this Act, to improve any river or stream for the improvement, of which any other Company has been formed, either under this Act or any other Act of the Legislature, or upon which there is constructed any provincial work without the consent of such other company, or of the Governor in Council respectively which consent shall be formally expressed in writing, and shall be registered together with the instrument, by which such Company has been incorporated as hereinafter provided.

5. In case five or more persons having formed themselves into a Company under this Act have subscribed stock to an amount adequate in their judgment to the construction of the intended work they shall execute an instrument in duplicate according to the form in the schedule to this Act, and the Company, or one of their number, or the directors named in the said instrument shall pay to the treasurer of the Company six per cent upon the amount of the capital stock of the Company mentioned in the said instrument, together with a receipt from the treasurer of the Company for the payment or instalment of six per cent, and also the approval in writing of the Commissioner of Public Works mentioned in the tenth section of this Act.

6. Registration shall be made by leaving one of the original instruments and the receipt and approval aforesaid with the registrar of any one county in which the intended works are wholly or partly situated, or are intended to be made; and such registrar shall copy the said instrument, receipt and approval into a book to be provided by him for that purpose, and shall afterwards retain and file the said original documents in his office, and for such registration the Registrar shall be entitled to charge the same fees as for the registration of the memorial of a deed.

7. In all cases where a stockholder has not paid six per cent on the share or shares held by him, but some other party paid the same on his behalf, the party so paying may recover the amount as a debt in any competent court, although not previously authorized to pay the money on behalf of such stockholder.

8. Every Company, before commencing any of the works in its contemplation, shall cause a Report to be laid before the Commissioner of Public Works, and a copy of such Report before the Municipal Council of the County, in which such works are proposed to be situated; or if the works are situated in more than one County, then before the Municipal Council of the Counties in or on the boundaries, which such works are proposed to be situated; or if such proposed works are in unsurveyed lands, not contained within the bounds of any County, then before the Chief Commissioner of Public Works alone.

9. The Report shall contain:—

1. A copy of the instrument by which the Company is incorporated

2. A detailed description of the works to be undertaken and an estimate of their cost.

3. An estimate from the best available sources of the quantity of different kinds of timber expected to come down the river yearly after the works have been completed; and

4. A schedule of the tolls proposed to be collected.

10. The Company shall not commence any such works until the approval of the Commissioner of Public Works has been signified in writing, nor until after the expiration of thirty days from the laying the Report or Reports aforesaid before the Municipal Council or Councils (as the case may be), although the approval of the Commissioner of Public Works has been signified in writing before the expiration of that period.

11. When the requirements, contained in the preceding sections have been complied with, the Company shall become a chartered and incorporated Company, by the name designated in the instrument so to be registered as aforesaid, and by such name they and their successors shall be capable of purchasing, holding and conveying, selling and departing, with any lands, tenements and hereditaments whatsoever, which may be

useful and necessary for the purposes of the corporation; and every such work as aforesaid and all the materials from time to time provided for constructing, maintaining, or repairing the same, shall be vested in such company and their successors.

12. Every such Company may make by-laws, and from time to time alter and amend the same for the purpose of regulating the safe and orderly transmission of timber over or through the works of the Company, and the navigation therewith connected.

13. Copies of such by-laws shall be annexed to the Reports required to be made by the Company by the 8th and 9th sections of this Act, and copies of all new by-laws and of all amended by-laws shall be annexed to the annual Reports required by the 27th section of this Act.

14. No such by-law or amended by-law shall have any force until one month after it has been included in such Report; but if at the end of one month such by-law has not been disallowed as it may be by the Commissioner of Public Works, it shall have full force, and be binding upon the Company, and upon all persons using the works.

15. No such by-law shall impose any penalties, or shall contain anything contrary to the true meaning and intention of this Act.

16. The affairs, stock, property and concerns of every such Company shall for the first year be managed and conducted by five Directors, to be named in the instrument, so to be registered as aforesaid, and thereafter to be annually elected by the stockholders on the second Monday of December, according to the provisions of a by-law to be passed by the Directors for that purpose.

17. Such by-law shall regulate:—

1. The manner of voting;

2. The place and hour of meeting for the election of directors and of candidates for the direction; and

3. Any other matters except the day of election, which the directors deem necessary to carry out the provisions of this and the last preceding section.

18. Such by-law shall be published for three successive weeks in the newspaper, or one of the newspapers nearest the place where the directors of the Company usually meet for the transaction of business.

19. The directors may alter, change or amend, any such by-law, and such amended by-law shall be published in the manner above provided.

20. If the annual election of directors does not take place at the time appointed, the Company shall not thereby be dissolved; but the directors for

the time being shall in that case continue to serve until another election of directors has been held.

21. Another election, when necessary, shall be held within one month after the time appointed by law, and at a time which shall be provided for by by-law to be passed by the directors of the Company for that purpose.

22. At any election of directors each stockholder shall be entitled to one vote for every share he holds in the Company, and upon which he is not in arrear on any call in respect thereof.

23. Any person being a stockholder and not in arrears as aforesaid, shall be eligible as a director.

24. A majority of the directors shall be a quorum for the transaction of business.

25. The directors may elect one of their number to be the President, and may nominate and appoint such officers and servants as they deem necessary; and in their discretion may take security from such officers and servants respectively for the due performance of their duties, and that they will duly account for all money coming into their hands to the use of the Company.

26. If any vacancy happens amongst the directors during the current year of their appointment, said vacancy shall be filled up for the remainder of the year by a person nominated by a majority of the remaining directors, unless it is otherwise provided by some by-law or regulation of the Company.

27. The directors of every Company incorporated under this Act shall annually, in the month of January, report to the Commissioner of Public Works, which report shall be under the oath of the treasurer of the Company, and shall specify:

1. The cost of the work;

2. The amount of all money expended;

3. The amount of the capital stock, and how much paid in;

4. The whole amount of tolls expended on such work;

5. The amount received during the year from tolls and all other sources, stating each separately, and distinguishing the tolls on different kinds of timber;

6. The amount of dividends paid;

7. The amount expended for repairs; and—

8. The amount of debts due by the Company, specifying the objects for which the debts respectively were incurred.

28. Every Company shall keep regular books of accounts, in which shall be entered a correct statement of the assets, receipts and disbursements of the Company, and such books shall be at all times open to the inspection and examination of any stockholder, or any person for that purpose appointed by the Commissioner of Public Works, and every such inspector may take copies or extracts from the same, and may require and receive from the keeper of such books, and also from the president, and each of the directors of the Company, and all the other officers and servants thereof, all such information as to such books and the affairs of the Company generally, as the inspector deems necessary for the full and satisfactory investigation into, and report upon the state of the affairs of the Company, so as to enable such inspector to ascertain whether the tolls levied upon such work are greater than this Act allows to be levied.

29. If at any time after the formation of any such Company, the directors are of opinion that it is desirable to alter, improve, or extend the said work, or that the original capital subscribed will not be sufficient to complete the work contemplated, the said directors, under a resolution to be passed by them for that purpose, may issue debentures for sums not less than one hundred dollars each, signed by the president and countersigned by the treasurer of the Company, and not exceeding in the whole one fourth of their paid up capital, or may borrow upon security of the Company, by bond or mortgage of the works and tolls thereon, a sufficient sum to complete the same; or may authorize the subscription of such number of additional shares as may be named in their resolution, a copy whereof, under the hand of the president and seal of the Company, shall be engrossed at the head of the subscription list to be opened for subscribers to the additional shares.

30. When such a number of new shares have been subscribed as the directors deem desirable to have registered, the president shall deliver such new list of subscribers to the registrar having the custody of the original instrument, and he shall attach such new list of subscribers thereto, and such list shall thenceforth be held and taken to be part and parcel of the said instrument.

31. All the subscribers to such list, and those who afterwards enter their names as subscribers thereon, with the consent of the directors, signified by a resolution of the board, under the hand of the president and seal of the Company, shall be subject to all the liabilities, and entitled to all the rights, benefits, privileges and advantages of original subscribers, as well with respect to the first works undertaken as to any extension or alteration thereof, as aforesaid; and such list and the subscriptions thereon shall thenceforth be considered as part and parcel of the original undertaking.

32. Such additional shares and stock shall be called in, demanded and recovered in the same manner and under the same penalties as provided or authorized in respect of the original shares and stock of the Company.

33. The directors may call in and demand from the stockholders of the Company, respectively, all sums of money by them subscribed, at such times and in such payments or instalments, not exceeding ten per cent. at any one time, as the directors deem proper, upon notice requiring such payment, published for four successive weeks in the newspaper, or one of the newspapers nearest the place where the directors usually meet for the transaction of business.

34. Any shareholder neglecting or refusing to pay a rateable share of the calls, as aforesaid, for the space of two months after the time appointed for the payment thereof, shall forfeit his shares, which forfeiture shall go to the Company for the benefit thereof.

35. No advantage shall be taken of the forfeiture, unless the stock is declared to be forfeited at a general meeting of the Company, assembled at any time after such forfeiture has been incurred.

36. Such a forfeiture shall be an indemnification to the shareholder so forfeiting against all actions or prosecutions whatever for any breach of contract or agreement between such shareholder and the other shareholders with regard to carrying on such undertaking.

37. The Company may, in any court having jurisdiction in matters of simple contract to the amount demanded, sue for and recover of or from any stockholder in the Company, the amount of any call or calls of stock which such stockholder has neglected to pay, after public notice thereof for two weeks in the newspaper, or one of the newspapers published nearest the place where the directors of the Company meet for the transaction of business.

38. In any suit by the Company against a stockholder brought to recover the money due for any call, it shall not be necessary to set forth the special matter, but it shall be sufficient for the Company to aver that the defendant is the holder of one share or more (stating the number of shares), in the stock of the Company, and that he is indebted to the Company in the sum of money to which the calls in arrear amount, in respect of any call or more upon one share or more (stating the number and amount of each of such calls) whereby an action hath accrued to the Company by virtue of this Act.

39. On the trial or hearing of any such suit, it shall be sufficient for the Company to prove that the defendant, at the time of making the call, was the holder of one share or more in the undertaking, (of which, when there has been no transfer of the shares, proof of subscription to the original agreement to take stock shall be sufficient evidence of the amount subscribed), and to prove that such call was in fact made, and such notice thereof given as is required, whereupon the Company shall be entitled to recover the amount due upon such call, with interest thereon, unless it appears that due notice of such call was not given, and it shall not be necessary to prove the appointment of the Directors who made the call or any other matter whatever.

40. The oath of the Treasurer shall be deemed sufficient proof of such notice, and a copy thereof shall be filed in the office of the Clerk of the Court, where the trial takes place.

41. If upon demand made by the Directors of the Company, the owner or occupier of any land over, through, or upon which the Company desires to construct any such work, or which would be flooded or otherwise interfered with, or upon which any power given by this Act to the Company is intended to be exercised, neglects or refuses to agree upon the price or amount of damages to be paid for, or for passing through or using such land, or for flooding or otherwise interfering with the same, and for appropriating the same to and for the use of the Company, or for the exercise of any such power as aforesaid, the Company may name one arbitrator, and the owner or occupier of such land may name another arbitrator, and the said two arbitrators may name a third to arbitrate and determine upon the amount which the Company shall pay before taking possession of such land, or exercising such power, and the decision of any two of the said arbitrators shall be final.

42. In ascertaining the amount aforesaid due, attention shall be had by the arbitrators to the benefits which will accrue to the party demanding compensation by the construction of the intended works.

43 The Company may tender the sum awarded to the party claiming compensation, who shall thereupon be bound to execute a conveyance of the land to the Company, or such other document as may be requisite, and the Company, after such tender, whether a conveyance or other document be executed or not, may enter upon and take possession of the land to, and for the uses of the Company, and may hold the same, or exercise such power as aforesaid in the same manner as if a conveyance thereof or other document has been executed.

44. If any such owner or occupier neglects to name an arbitrator for the space of twenty days after having been notified so to do by the Company, or if the said two arbitrators do not within the space of twenty days after the appointment of such second arbitrator agree upon a third arbitrator, or if any one of the said arbitrators refuses or neglects within the space of ten days after his appointment to take upon himself the duties thereby imposed, then, upon the application of the Company, or of the other party, the Judge of the County Court of the County in Upper Canada, or of the Circuit Court of the Circuit in Lower Canada within which the land lies, shall nominate a disinterested competent person from any township or parish adjoining the township or parish in which such land is situated, to act in the place of the arbitrator so refusing or neglecting; and every arbitrator so appointed by the Judge of the County Court or Circuit Court, as the case may be, shall hear and determine the matter to be submitted to him with all convenient speed after he has been so nominated as aforesaid; and any award made by a majority of the arbitrators shall be as binding as if the three arbitrators had concurred in and made the same.

45. In case any lands required by the Company for the purpose of any such work, or with regard to which any such power is to be exercised as aforesaid, are held or owned by any person, body, politic, corporate, or collegiate, whose residence is not within this Province, or is unknown to the Company, or in case the title to any such lands is in dispute, or in case such lands are mortgaged, or in case the owner or owners of such lands are unknown or unable to treat with the Company for the sale thereof, or the exercise of any such power as aforesaid by the Company, or to appoint arbitrators as aforesaid, the Company may nominate one indifferent person, and the Judge of the County Court, or of the Circuit Court, where such lands are situate, on the application of the Company may nominate and appoint one other disinterested competent person from any township or parish adjoining the township or parish in which such lands are situate who together with one other person to be chosen by the persons so named before proceeding to business, or in the event of their disagreeing as to the choice with one other person to be appointed by such Judge as aforesaid, before the others proceed to business, shall be arbitrators to award, determine, adjudge, and order the respective sums of money which the Company shall pay to the party entitled to receive the same for the said lands or damages as aforesaid, and the decision of a majority of such arbitrators shall be binding.

46. When demanded the Company shall pay, or cause to be paid to the several parties entitled to the same, the amount so awarded.

47. A record of the award shall be made up and signed by the arbitrators, or a majority of them specifying the amount awarded and the costs of arbitration, which may be settled by the said arbitrators, or a majority of them; and such record shall be deposted in the Registry Office of the County in or along which such lands are situate, and the Company may thereupon enter and take possession of such land to and for the uses of the Company, and may proceed with the construction of the works affecting the same.

48. The expenses of any arbitration under this Act shall be paid by the Company, and by them deducted from the amount of the award on payment thereof to the parties entitled to receive the same if the Company before the appointment of their arbitrator had tendered an equal or greater sum than that awarded by the arbitrators, otherwise such expenses shall be borne by the Company, and the arbitrators shall specify in their award by which of the parties the said costs to be paid.

49. All lands taken by the Company for the purpose of any such work, and which have been purchased and paid for by the Company in the manner hereinbefore provided shall become the property of the Company, free from all mortgages, incumbrances and other charges.

50. If any such work be constructed upon or otherwise interferes with any tract of land, or property belonging to or in possession of any tribe of Indians in this Province, or if any property belonging to them be taken, or

any act be done under authority of this Act, occasioning damage to their properties or their possessions, compensation shall be made to them therefor in the same manner as provided with respect to the property, possession or rights of other individuals, and whenever it is necessary for arbitrators to be chosen by the parties for settling the amount of such compensation, the chief officer of the Indian Department within the Province shall name an arbitrator on behalf of the said Indians, and where the said lands belong to any tribe or body of Indians, the amount awarded shall be paid to the said chief officer for the use of such tribe or body.

51. The arbitrators so appointed shall fix a convenient day for hearing the respective parties, and shall give eight days' notice at least of the day and place; and having heard the parties or otherwise examined into the merits of the matter so brought before them, the said arbitrators or a majority of them, shall, within thirty days of their appointment, make their award or arbitrament thereupon in writing, which award or arbitrament shall be final as to the amount in dispute.

52. In case there be already established by any party other than a Company formed, under this Act or some other Act of this Province, any slide, pier, boom or other work intended to facilitate the passage of timber down any water for the improvement of which a Company is formed, under this Act, such Company may take possession of the works; and the owners thereof, or (if they have been constructed on th property of the crown), the persons at whose cost they have been constructed may claim a compensation for the value of such works, either in money or in the stock of such Company, at the option of such owner or the person at whose cost the same was constructed, and may become stockholders in the said Company for an amount equal to the value of such works, such value to be ascertained by arbitrators appointed in the manner hereinbefore provided; and all the provisions of the 45th to the 49th sections of this Act shall apply to such work, and the proprietors or possessors thereof in the same manner, and to the same extent as to land required by such Company, and to the proprietors and occupiers thereof.

53. And in case any such Company purchases or takes possession of such works as aforesaid, and does not make or construct any other works than those so acquired, it shall not be requisite for the Company to observe the formalities required by the 8th and 9th sections of this Act, excepting only that such Company shall furnish the Commissioner of Public Works with the Report and copy of Report in the said sections mentioned.

54. Nothing herein contained shall authorize any Company formed, under this Act, to take possession of, or in any wise injure any mill site, upon which there is existing any mills or machinery, or any hydraulic works other than those intended to facilitate the passage of timber; and no Company formed, under this Act, shall commence any work, which interferes with or endangers any such occupied mill site without the assent in writing of the proprietor thereof previously obtained, or an award of

arbitrators appointed as herein provided, to the effect that the proposed works will not injure such mill site, which assent or award shall be registered in the same manner as the instrument of incorporation of such Company.

55. The provisions of the 17th and 18th sections of the 48th chapter of the Con. Stat. of U. C., respecting mills and mill dams, shall extend to similar land in Upper Canada overflowed by any of the works constructed by the Company formed under this Act.

56. Nothing herein contained shall authorize any Company formed, under this Act, to obstruct any waters already navigable, or to collect any tolls other than those upon timber.

57. If by reason of any dam erected by any Company formed under this Act, any fall or water power be erected, the Company shall in no wise have any title or claim to the use of such water power; nevertheless, if the owner or occupier of the land adjoining has made a claim for compensation for damages arising from such dam, the arbitrators may take into account the increased value of his property by reason of the water power so created.

58. The tolls for the first year shall be calculated upon the estimates hereinbefore required to be made of the cost of the works, and the quantity of different kinds of timber expected to pass down the stream; and the tolls in all future years shall be calculated upon the cost of the works, and the quantity of different kinds of timber expected to pass down the stream; and the receipts and expenditure, according to the accounts of the then preceding year, as rendered in accordance with the provisions of the 27th and following sections of this Act, and the tolls shall be so calculated that after defraying the necessary cost of maintaining and superintending the works, and collecting the tolls, the balance of the receipts may as nearly as possible be equal, and in no case exceed ten dollars for every hundred expended and invested in the said works; and if in any year the receipts from tolls are such, that, after defraying all the current expenses, there remains a clear profit of more than ten dollars upon every hundred of the capital expended, there shall nevertheless be divided among the shareholders no greater dividend than after the rate of ten dollars for every hundred, and the remainder shall be carried over to the receipts of the following year.

59. The tolls to be collected upon different kinds of timber shall bear to each other the following proportions, viz.:—

Red and White Pine, per piece	1d.
Oak, Elm, and other hard wood, per piece	1½
Spars, per piece	3
Masts, per piece	5
Saw logs, per piece	1/12
Saw lumber, per m.b.m	1
Staves, "	15
Firewood, shingle bolts, and other timber, per cord	2

60. The annual report required to be read by every Company shall contain a schedule of the tolls calculated as aforesaid, which it is proposed to collect in the following year; and if it has not been notified to the president of the Company, on or before the 15th day of March in each year, that the schedule of tolls has been disallowed by an order of the Commissioner of Public Works, the president of the Company shall cause the said schedule of tolls to be published for the space of one month in some newspaper published within the county or counties, district or districts, in which or nearest to which such works are situate, and such tolls so published shall be the lawful tolls for that year; but if it appears to the Commissioner of Public Works that the proposed schedule of tolls has not been calculated, according to the true intent and meaning of this Act, such Commissioner may, by an instrument under his hand, alter or vary the said schedule of tolls, so as to make them correspond with the true meaning of this Act, and such amended schedule of tolls shall be notified to the president of the Company, and shall by him be published as aforesaid, and shall be the lawful tolls for that year.

61. Every such Company may demand from the owner of any timber intended to be passed through any portion of the works of the Company, or from the person in charge of the same, a written statement of the quantity of each kind of timber, and of the destination of the same and of the sections of the works through which it is intended to pass; and if no such written statement is given when required, or a false statement is given, the whole of such timber or such part of it, as has been omitted by a false statement, shall be liable to double toll.

62. Every such Company may demand and receive the lawful toll upon all timber which has come through or over any of the works of the Company, and the Company by its servants shall have free access to all such timbering for the purpose of measuring or counting the same.

63. If the just tolls be not paid on demand, the Company may sue for the same in any Court of competent jurisdiction, and recover from the owner of the timber the amount of the toll and the costs of suit.

64. If the owner of the timber objects to the amount of tolls demanded and tenders a sum which he claims to be the true and just amount of the tolls the Company shall pay the costs of the suit, unless the judgment obtained is for a greater amount than the sum so tendered.

65. If timber has not come through or over the whole of the works of the Company, but only through or over a part thereof, the owner of the timber shall only be liable to pay tolls for such sections of the whole works as he has made use of, if in the schedule of tolls the work is divided into sections, and if not, then to pay such a portion of the whole toll as the distance such timber has come through the works bears to the whole distance over which such works extend.

66 If the true owner of any timber which has passed through any of the works of the Company cannot be ascertained, or if there be reasonable ground to apprehend that the tolls thereon have not been paid by the owner or reputed owner, or person in charge, any Mayor, Reeve, or Justice of the Peace, having jurisdiction within the locality through or adjoining which such navigation extends, or where the timber may be bound, if within twenty miles of any such works, shall upon the oath of any director or servant of the Company that the just tolls have not been paid, issue a warrant for the seizure of such timber, or so much thereof as shall be sufficient to satisfy the tolls, which warrant shall be directed to any constable, or any person sworn in as a special constable for that purpose at the discretion of the Magistrate, and shall authorize the person to whom it is directed if the tolls are not paid within fourteen days from the date thereof to sell the said timber, and out of the proceeds to pay to the Company the just tolls, together with the costs of the warrant and sale, rendering the surplus on demand to the owner.

67. If any person wilfully and maliciously burns, breaks down, injures, cuts, removes, or destroys, in whole or in part, any dam, pier, slide, boom, or other work of any such Company, or any chain, or other fastening attached thereto, or wilfully and maliciously impedes or blocks up any channel or passage intended for the transmission of timber, he shall be guilty of misdemeanor, and on conviction thereof shall be punished by fine and imprisonment in the common gaol for any term not exceeding one year at the discretion of the Court before whom the offender is convicted.

68. If any person resists or impedes any of the servants of any such Company in the transmission of any timber through any such works, or in carrying out any of the regulations of the Company for the greater safety and regularity of such transmission, or resists any such servants who may require access to any craft or other timber to ascertain the just tolls thereon, or in any way molests such Company or its servants in the exercise of any rights secured to them by this Act, such person shall upon conviction thereof in a summary way before a Justice of the Peace having jurisdiction in the locality in or adjoining, which the offence has been committed, be sentenced to pay a fine of not more than ten dollars, nor less than one dollar, together with all costs, to be paid within a time to be limited by the said Justice, and in default to be levied as hereinafter provided.

69. In any proceeding or prosecution before any Justice of the Peace under this Act, the Justice may summon the party complained against to appear at a time and place to be named in the summons; and if he does not appear accordingly, then upon due proof of the service of the summons upon such party, either personally or by leaving a copy thereof at his usual place of abode, or with any adult person belonging to the raft to which such party is attached, the Justice may either proceed to hear and determine the case *ex parte*, or issue his warrant for apprehending and bringing such party before himself or some other Justice of the Peace, or

the Justice may, without previous summons, issue such warrant, and the Justice before whom the parties appear or are brought shall proceed to hear and determine the case.

70. The fines and forfeitures authorized to be summarily imposed by this Act may be recovered upon information and complaint before any Justice of the Peace of the County within which the same have been incurred, and shall be levied and collected by distress and sale of the offenders' goods and chattels under the authority of a warrant of distress for that purpose to be issued by the Justice before whom the conviction has been had.

71. In case there are no goods and chattels to satisfy such warrant the offender shall be committed to the common gaol of the District or County for any period not exceeding one month; but this section shall not prevent the issuing of a warrant of commitment in the first instance upon a conviction for any offence mentioned in the 67th section of this Act.

72. All fines and forfeitures collected under the authority of this Act shall be paid to the treasurer of the County owning the work in respect of which such fines and forfeitures have been imposed for the use of such companies respectively.

73. If any action or suit brought by or against any such Company upon any contract or for any matter or thing whatsoever, any stockholder or any officer or servant of the Company shall be competent as a witness and his testimony shall not be deemed inadmissable on the ground of his being such servant or officer.

74. If any suit be against any person for any matter or thing done in pursuance of this Act, such suit shall be brought within six months next after the fact committed, and not afterwards, and the defendant therein may plead the general issue only and give this Act and the special matter in evidence on the trial.

75. Every such Company shall within two years from the day of their becoming incorporated complete each and every work undertaken by them and for the completion whereof they may be incorporated, in default whereof they shall forfeit all the corporate and other powers and authority which they have in the meantime acquired, and all their corporate powers shall thenceforth cease and determine unless further time be granted by a by-law of the County or Counties, district or districts adjoining where the work is situated; and if any Company formed under this Act, for the space of one year, abandons any works completed by them so that the same are not in sufficient repair and cannot be used for the purpose proposed in their instrument of incorporation, then their corporate powers shall cease and determine.

76. After any works constructed by a Company under this Act have been completed and tolls established, the Company shall keep the same in good

and sufficient repair; and if any such works have not been constructed according to the description given thereof in the report required by the other sections of this Act, or have become insufficient or out of repair, any person interested in the navigation, may serve upon any servant of the Company a notice of such insufficiency, and if within a reasonable time after the service of such notice the necessary repairs have not been completed such Company shall be liable for the damage which any person may sustain from the continuance of such insufficiency; but no Company formed under this Act shall be held liable for any damage so long as their works are in accordance with the description or specification thereof in the original instrument required to be registered, or in any description or specification subsequently approved of or registered, or in any description or specification thereof in the original instrument required to be registered, or in description or specification subsequently approved of and registered, nor for any damage arising from the accidental destruction or injury of their works, but only for the damage which may arise from the wilful neglect of the Company after notice served upon one of its servants, as hereinfore provided.

77. Any two Companies formed for the construction of works on any streams contiguous to each other may unite and form one consolidated Company on such terms as to them seem meet; and the name of such united Companies to be then assumed shall henceforth be the corporate name thereof, and such united Companies may then exercise and enjoy all the rights, and shall be subject to all the liabilities of other Companies formed under the provisions of this Act, and which the separate Companies had and engaged, or were subject or liable to before the union thereof.

78. Notwithstanding the privileges conferred by this Act, the Legislature may at any time in their discretion make such additions to this Act, or such alterations of any of its provisions as they may think proper for offering just protection to the public, or to any person, or body, corporate, or politic, in respect to their estate, property, right or interest therein, or any advantage, privilege, or convenience connected therewith, or in respect to any way, or right of way, that may be affected by any of the powers given to any such corporation.[1]

79. Whenever it is found expedient for the public service, the Governor in Council may declare any Company formed under this Act dissolved, and may declare all the works of any such Company, Provincial works, upon payment to such Company of the then actual value of the works to be decided by arbitrators, one of whom shall be appointed by the Commissioner of Public Works and one by the Company, and if they do not agree to an award, the Judge of the County Court for the County in Upper Canada, or the Judge of the Circuit Court in Lower Canada, in or adjoining which the works are situate, shall be the third arbitrator.

[1] *Vide supra*, p. 375.

80. In every case where any lands or works in Lower Canada have been acquired or purchased, or taken possession of, under the provisions of this Act, and when the Company purchasing or taking possession of such lands or works have cause to believe that the occupier or person in possession of such lands or works is not the legal owner thereof, or that such lands or works are already mortgaged or hypothecated, the Company shall not be bound to pay the amount of the purchase money or of the award provided for by this Act to the occupier thereof, but may deposit in the hands of the Prothonotary of the District in which such lands or works are situate, the purchase money of such land or works, or the amount awarded therefor, together with their deed of purchase and award, as the case may be, and may proceed to obtain a ratification by the Superior Court, sitting in such district of such deed of purchase or award in the manner practised for the ratification of title deeds.

81. The real proprietor of such land or works, and all others having claims in or upon the same, may intervene in such proceeding and claim and obtain the purchase money or amount awarded for such lands or works, or there due share thereof, and the court may grant such ratification, and upon the ratification shall become and be the legal and indefeasible proprietor of the lands or works, free and clear of all claims, charges and incumbrances whatsoever, and the money so deposited shall stand in lieu of such land or work, and in case of substitution, or where minors or interdicted parties are interested the Court may make such order as seems meet for the protection of the parties entitled to the same.

SCHEDULE—See Sec. 5.

Be it remembered that on this day of in the year of our Lord,

We, the undersigned stockholders, met at County of in the Province of Canada, and resolved to form ourselves into a Company, to be called (, according to the provisions of the Con. Stat. Can. intituled an Act, etc. for the purpose of constructing a slide, wharf, pier, (or other such work as aforesaid, describing the nature, extent and situation thereof,) and we do hereby declare that the capital stock of the said Company shall be dollars to be divided into shares, at the price or sum of twenty dollars each, and we, the undersigned stockholders, do hereby agree to take and accept the number of shares set by us, opposite to our respective signatures, and we do hereby agree to pay the calls thereon according to the provisions of the said, in part recited Act, and of the rules and regulations, resolutions and by-laws of the said Company, to be made or passed in that behalf, and we do hereby nominate to be the first Director of said Company.

AN ACT TO AMEND THE ACT RESPECTING JOINT STOCK COMPANIES TO CONSTRUCT WORKS TO FACILITATE THE TRANSMISSION OF TIMBER DOWN RIVERS AND STREAMS.

(36 Vic., cap. 64.)

Assented to 23rd May, 1873.

Whereas it is expedient to amend the sixty-eighth chapter of the Consolidated Statutes of Canada intituled: "*An Act respecting Joint Stock Companies to construct works to facilitate the transmission of timber down rivers and streams;* therefore Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

1. Every Company heretofore formed, or which may be hereafter formed under the above recited Act, or any Act or Acts amending the same, who shall neglect or omit to comply with the twenty-seventh, the twenty-eighth and the sixtieth sections of the said above recited Act, shall incur a penalty of not less than fifty dollars, and not more than two hundred dollars, current money of Canada, and such penalty shall be recoverable with costs in a summary manner before any Justice of the Peace upon the oath of one credible witness, and such Justice of the Peace shall levy such penalty and costs, if not forthwith paid by warrant of distress and sale of the goods and chattels of such Company, and such penalty shall belong to Her Majesty for the public uses of the Dominion.

2. This Act shall be construed as forming part of the above recited Act.

AN ACT TO AMEND THE ACT RESPECTING JOINT STOCK COMPANIES TO CONSTRUCT WORKS TO FACILITATE THE TRANSMISSION OF TIMBER DOWN RIVERS AND STREAMS.

(43 Vic., cap. 9.)

Assented to 29th April, 1880.

Whereas, it is expedient to amend the Act, being chapter sixty-eight of the Consolidated Statutes of the late Province of Canada, intituled "*An Act respecting Joint Stock Companies to construct works to facilitate the transmission of timber down rivers and streams;*" Therefore Her Majesty by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

1. Section fifty-nine of the said Act is hereby repealed and the following substituted therefor:—

59. The tolls to be collected upon different kinds of timber shall bear to each other the following proportions, viz:

Red and White Pine, Tamarac, Spruce and Hemlock, square, per piece	1c.
Oak, Elm, and other hardwood, square or flatted	1½
Spars	3
Masts	5
Sawlogs, 17 feet and under	0½
Red and white pine, Tamarac, Spruce and Hemlock, round or flatted, over 17 feet, and under 25 feet long	0⅓
Do. do. 25 to 35 feet long	0⅔
Do. do. 35 feet and upwards in length	0⅔
Sawed lumber per M. board measure	3
Staves, per M	15
Firewood, Shingle, and other lumber, per cord	2

AN ACT TO AUTHORIZE CORPORATIONS AND INSTITUTIONS WITHOUT THE LIMITS OF CANADA TO LEND AND INVEST MONEY THEREIN.

(37 Vic., cap. 49.)

Assented to 26th May, 1874.

Whereas it would greatly tend to assist the progress of public works and other improvements now going on within the Dominion of Canada, if facilities were offered to institutions and corporations, incorporated without the Dominion of Canada for the purpose of lending moneys, to lend their money within the Dominion, and with that object it is expedient to confer on such institutions and corporations powers to contract and also to hold as security, lands within the Dominion.

Therefore, Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

1. It shall be lawful for any institution or corporation, duly incorporated under the laws of the Parliament of Great Britain and Ireland, for the purpose of lending, on receiving a license from the Secretary of State, authorizing it to carry on business within the Dominion of Canada to transact any loaning business of any description whatsoever within the said Dominion of Canada in its corporate name, except the business of banking, to take and hold any mortgages of real estate, and any railway, municipal, or other bonds of any kind whatsoever, on the security of which it may lend its money, at any rate of interest not exceeding the rate permissible on such securities by the Acts incorporating similar Companies in the several Provinces of the Dominion, and whether the said bonds form a charge on real estate within the said Dominion or not and also to hold such mortgages in its corporate capacity, and to sell and transfer the same, and to hold and convey the title to real estate so acquired, within five years from the time that the mortgage on the said real estate shall become due and payable under the terms of the instrument creating such mortgage.

2. Every Company obtaining such license, as aforesaid, shall before the commencement of such business, file in the office of the Secretary of each Province, in which the Company proposes to do business, a certified copy of the charter, Acts of incorporation or articles of association of such Company and also a power of attorney to the agent or manager of such Company, in such Province, signed by the president or managing director and secretary thereof, and verified as to its authenticity by the oath of the principal agent or manager of such Company, in the Dominion, or by the oath of any person cognizant of the facts necessary for its verification, which power of attorney must expressly authorize such agent or manager as far as respects business done by such agent or manager within such Province, to accept process in all suits or proceedings against such Com-

pany, in the Province, for any liabilities incurred by such Company therein, and must declare that service of process on such agent or manager for such liabilities shall be legal and binding on such Company to all intents and purposes whatever, and waiving all claims of error by reason of such service.

3. After such certified copy of the charter and such power of attorney are filed as aforesaid, any process in any suit or proceeding against such Company for any liability incurred in any Province may be served upon such manager or agent in the same manner as process may be served upon the proper officer of any Company incorporated in such Province, and all proceedings may be had thereupon to judgment and execution in the same manner as in proceedings in any civil suit in such Province.

4. Every Company obtaining such license as aforesaid shall forthwith give due notice thereof in the *Official Gazette*, and in at least one newspaper in the county, city, or place where the principal manager or agent of such Company transacts the business thereof, and shall continue the publication thereof for the space of one calendar month, and the like notice shall be given when such Company shall cease or notify that they cease to carry on business within the Province.

5. The Secretary of State may if he see fit, issue such license as aforesaid on being furnished with evidence of the due incorporation of the Company, applying for such license under the laws of the Imperial Parliament of Great Britain and Ireland, or any foreign State, which evidence shall be a certified copy of the charter, Act of incorporation, or articles of association of such Company, and on being furnished with a power of attorney from such Company to the person appointed to be the principal agent or manager of such Company within the Dominion, under the seal of such Company, and signed by the president or managing director and secretary thereof, and verified by the oath of an attesting witness, expressly authorizing such agent or manager to apply for such license, and the fee to be paid by such Company on the issuing of such license shall be twenty dollars.

ONTARIO STATUTES.

CHAPTER 149.

AN ACT CONTAINING GENERAL PROVISIONS APPLICABLE TO JOINT STOCK COMPANIES INCORPORATED BY SPECIAL ACT FOR CERTAIN PURPOSES.

(Rev. Stats. Ont., Cap. 149.)

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HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. This Act may be cited as "*The Ontario Joint Stock Companies General Clauses Act.*"

2. The expression "The Special Act," when used in this Act, shall be construed to mean any Act incorporating a Company for any of the purposes herein mentioned, and with which this Act is incorporated, in manner hereinafter mentioned, and also all Acts amending such Act. 24 Vic., c. 18, s. 3.

3. The following words and expressions, both in this and the Specia Act, shall have the meanings hereby assigned to them, unless there is something in the subject or context repugnant to such construction, that is to say:

1. "The Company" shall mean the Company incorporated by the Special Act;

2. "The undertaking" shall mean the whole of the works and business of whatever kind, which the Company is authorized to undertake and carry on;

3. "Real estate" or "land," shall include all real estate, messuages, lands, tenements and hereditaments, of any tenure;

4. "Shareholder" shall mean every subscriber to or holder of stock in the Company, and shall extend to and include the personal representatives of the shareholder. 24 Vic., c. 18, s. 4.

4. When not otherwise expressly enacted, this Act shall apply to every Joint Stock Company, subject to the Legislative authority of the Legislature of this Province, and incorporated by any Special Act passed since the eighteenth day of May, 1881, or hereafter, for any of the following purposes:—

1. The carrying on of any kind of manufacturing, shipbuilding, mining, mechanical or chemical business;

2. The erection and maintenance of any building or buildings to be used in whole or part as a Mechanics' Institute, or Public Reading or Lecture Room, or as a place for holding Agricultural or Horticultural Fairs or Exhibitions, or as a place for Educational, Library, Scientific or Religious purposes, or as a Public Hotel, or as a place for Baths and Bath-houses;

3. The opening and using of Petroleum, Salt or Mineral Springs;

4. The carrying on of any Fishery or Fisheries in this Province, or the waters thereto adjacent, and the building and equipping of vessels required for such Fishery or Fisheries;

5. The carrying on of any general forwarding business, and the construction, owning, chartering or leasing of ships, steamboats, wharves roads, or other property required for the purpose of such forwarding business;

6. The supplying of any place with Gas or Water, or with both Gas and Water;

7. The constructing of any line or lines of Telegraph;

8. The acquiring or constructing, and maintaining of any dam, slide, pier, boom or other work necessary to facilitate the transmission of timber down any river or stream in this Province, and the blasting of rocks, the dredging or removing of shoals or other impediments, or the improving otherwise of the navigation of such streams for such purpose;

9. The acquiring or constructing, and maintaining of any plank, macadamized or gravelled road, or of any bridge, pier, wharf, dry dock, or marine railway;

And this Act shall be deemed to be incorporated with every such Special Act; and all the clauses and provisions of this Act, unless they are expressly varied or excepted by any such Special Act, shall apply to the Company thereby chartered, so far as applicable thereto, and shall, as well as the clauses and provisions of every other Act incorporated with such Special Act, form part of such Special Act, and be construed together therewith as forming one Act. 24 V., c. 18, s. 1.

5. For the purpose of incorporating this Act, or any of its provisions with a Special Act for purposes other than aforesaid it shall be sufficient in such Special Act, to enact, that the clauses of this Act, or such of them as in such Act may be particularly designated to that end, shall be incorporated with such Special Act; and thereupon, all such clauses, save in so far as they are expressly varied or excepted by such Special Act, shall be construed as if the same were formally embodied and reproduced therein. 24 V., c. 18, s. 2.

6. Every Company incorporated for any of the above purposes, under any Special Act, shall be a body corporate under the name declared in the Special Act, and may acquire, hold, alienate and convey, any real estate necessary or requisite for the carrying on of the undertaking of such Company, and shall be invested with all the powers, privileges and immunities necessary to carry into effect the intentions and objects of this Act and of the Special Act, and which are incident to such incorporation, or expressed or included in "*The Interpretation Act.*" 24 V., c. 18, s. 5.

7. All powers given by the Special Act to the Company shall be exercised subject to the provisions and restrictions contained in this Act. 24 V., c. 18, s. 6.

8. The affairs of every such Company shall be managed by a Board of not less than three, nor more than nine Directors. 24 V., c. 18, s. 7.

The persons named as such, in the Special Act, shall be the Directors of the Company, until replaced by others duly named in their stead. 24 V., c. 18, s. 8.

9. No person shall be elected or named as a Director thereafter, unless he is a shareholder, owning stock absolutely in his own right, and not in arrear in respect of any call thereon; And the major part of the after

Directors of the Company shall, further, at all times, be persons residents in this Province, and subjects of Her Majesty by birth or naturalization. 24 V., c. 18, s. 9.

11. The after Directors of the Company shall be elected by the shareholders, in general meeting of the Company assembled, at such times, in such wise, and for such term, not exceeding two years, as the Special Act, or, in default thereof, the by-laws of the Company may prescribe. 24 V., c. 18, s. 10.

12. In default only of other express provisions in such behalf, by the Special Act or by-laws of the Company,—

1. Such election shall take place yearly, all the members of the Board retiring, and (if otherwise qualified) being eligible for re-election;

2. Notice of the time and place for holding general meetings of the Company shall be given at least ten days previously thereto, in some newspaper published at or as near as may be to the place in which the office or chief place of business of the Company is;

3. At all general meetings of the Company, every shareholder shall be entitled to as many votes as he owns shares in the Company, and may vote by proxy;

4. Elections of Directors shall be by ballot;

5. Vacancies occurring in the Board of Directors may be filled for the unexpired remainder of the term, by the Board, from among the qualified shareholders of the Company;

6. The Directors shall from time to time elect from among themselves a President of the Company; and shall also name and may remove at pleasure, all other officers thereof, 24 V., c. 18, s. 11.

13. If at any time an election of Directors is not made or does not take effect at the proper time, the Company shall not be held to be thereby dissolved; but such election may take place at any general meeting of the Company duly called for that purpose; and the retiring Directors shall continue in office until their successors are elected. 24 V., c. 18, s. 12.

14. The Directors of the Company shall have full power in all things to administer the affairs of the Company, and may make or cause to be made for the Company any description of contract which the Company may by law enter into. 24 V., c. 18, s. 13.

15. The Directors may from time to time make by-laws not contrary to law, nor to Special Act, nor to this Act, to regulate—

(*a*) The allotment of stock, the making of calls thereon, the payment thereof, the issue and registration of certificates of stock, the forfeiture of

stock for non-payment, the disposal of forfeited stock and of the proceeds thereof, the transfer of stock;

(*b*) The declaration and payment of dividends;

(*c*) The number of the Directors, their term of service, the amount of their stock qualification;

(*d*) The appointment, functions, duties and removal of all agents, officers and servants of the Company, the security to be given by them to the Company, their remuneration and that (if any) of the Directors;

(*e*) The time at which and place where the annual meetings of the Company shall be held;

(*f*) The calling of meetings, regular and special, of the Board of Directors, and of the Company, the quorum, the requirements as to proxies, and the procedure in all things at such meetings;

(*g*) The imposition and recovery of all penalties and forfeitures admitting of regulation by by-law; and

(*h*) The conduct in all other particulars of the affairs of the Company;

and may from time to time repeal, amend or re-enact the same; but every such by-law, and every repeal, amendment or re-enactment thereof, unless in the meantime confirmed at a general meeting of the Company duly called for that purpose, shall only have force until the next annual meeting of the Company, and in default of confirmation thereat, shall, at and from that time only, cease to have force. 24 V., c. 18, s. 13.

16. A copy of any by-law of the Company, under its seal, and purporting to be signed by any officer of the Company, shall be received as *prima facie* evidence of such by-law in all Courts of Law or Equity in this Province. 24 V., c. 18, s. 14.

17. One-fourth part in value of the shareholders of the Company shall at all times have the right to call a special meeting thereof, for the transaction of any business specified in such written requisition and notice as they may issue to that effect. 24 V., c. 18, s. 13.

18 The stock of the Company shall be deemed personal estate, and shall be transferable, in such manner only, and subject to all such conditions and restrictions as by this Act, or by the Special Act or by-laws of this Company, may be prescribed. 24 V., c. 18, s. 15.

19. If the Special Act makes no other definite provision, the stock thereof shall be alloted, when and as the Directors, by by-law or otherwise, may ordain. 24 V., c. 18, s 16.

20. The Directors of the Company may call in and demand from the shareholders thereof, respectively, all sums of money by them subscribed, at such time and places, and in such payments or instalments, as the

Special Act, or as this Act may require or allow; and interest shall accrue and fall due, at the legal rate for the time being, upon the amount of any unpaid call, from the day appointed for payment of such call. 24 V., c. 18, s. 17.

21. Not less than ten per centum per annum upon the alloted stock of the Company shall, by means of one or more calls, be called in and made payable within one year from the incorporation of the Company; and for every year thereafter, at least a further ten per centum shall in like manner be called in and made payable, until the whole is called in. 24 V., c. 18, s. 18.

22. The Company may enforce payment of all calls and interest thereon, by action in any Court of competent jurisdiction; and in such action it shall not be necessary to set forth the special matter, but it shall be sufficient to declare that the defendant is a holder of one share or more, stating the number of shares, and is indebted in the sum of money to which the calls in arrear amount, in respect of one call or more upon one share or more, stating the number of calls and the amount of each, whereby an action has accrued to the Company under this Act; and a certificate under the seal, and purporting to be signed by an officer, of the Company, to the effect that the defendant is a shareholder, that such call or calls has or have been made, and that so much is due by him and unpaid thereon, shall be received in all Courts of Law and Equity as *prima facie* evidence to that effect. 24 V., c. 18, s. 19.

23. If, after such demand or notice as by the Special Act or by-laws of the Company is prescribed, any call made upon any share or shares is not paid within such time as by the Special Act or by-laws is limited in that behalf, the Directors, in their discretion, by vote to that effect, reciting the facts, and duly recorded in their minutes, may summarily forfeit any shares whereon such payment is not made; and the same shall thereupon become the property of the Company, and may be disposed of as by by-laws or otherwise it may ordain. 24 V., c. 18, s. 20.

24. No share shall be transferable, until all previous calls thereon have been fully paid in, or until declared forfeited for non-payment of calls thereon. 24 V., c. 18, s. 21.

25. No shareholder being in arrear in respect of any call shall be entitled to vote at any meeting of the Company. 24 V., c. 18, s. 22.

26. The Company shall cause a book or books to be kept by the Secretary, or by some other officer specially charged with that duty, wherein shall be kept recorded—

1. The names, alphabetically arranged, of all persons who are or have been shareholders;

2. The address and calling of every such person while such shareholder;

3. The number of shares of stock held by each shareholder;

4. The amounts paid in, and remaining unpaid, respectively, on the stock of each shareholder;

5. All transfers of stock, in their order as presented to the Company for entry, with the date and other particulars of each transfer, and the date of the entry thereof; and—

6. The names, addresses and calling, of all persons who are or have been Directors of the Company; with the several dates at which each person became or ceased to be such Director. 24 V., c. 18, s. 23.

27. The Directors may refuse to allow the entry in any such book, of any transfer of stock whereof the whole amount has not been paid in; and whenever entry is made in such book, of any transfer of stock not fully paid in, to a person not being of apparently sufficient means, the Directors, jointly and severally, shall be liable to the creditors of the Company, in the same manner and to the same extent as the transferring shareholder, but for such entry, would have been; but if any Director present when such entry is allowed forthwith, or if any Director then absent, within twenty-four hours after he has become aware thereof and able so to do, enters in the minute book of the Board of Directors his protest against the same, and within eight days thereafter causes such protest to be published in at least one newspaper published at, or as near as may be possible to, the office or chief place of business of the Company, such Director may thereby, and not otherwise, exonerate himself from such liability. 24 V., c. 18, s. 24.

28. No transfer of stock shall be valid for any purpose whatever, save only as exhibiting the rights of the parties thereto towards each other, and as rendering the transferee liable *ad interim* jointly and severally with the transferor, to the Company and other creditors,—until entry thereof has been duly made in such book or books. 24 V., c. 18, s. 25.

29. Such books shall, during reasonable business hours of every day, except Sundays and statutory and obligatory holidays, be kept open for the inspection of shareholders and creditors of the Company, and their personal representatives, at the office or chief place of business of the Company; and every such shareholder, creditor or representative may make extracts therefrom. 24 V., c. 18, s. 26.

30. Such books shall be *prima facie* evidence of all facts purporting to be thereby stated, in any suit or proceeding against the Company or against any shareholder. 24 V., c. 18, s. 27.

[*Section* 28 *of* 24 V., c. 18, *is as follows* :—

28. Every Director, officer or servant of the Company, who knowingly makes or assists to make any untrue entry in any such book, or who refuses or neglects to make any proper entry therein, or to exhibit the same, or to allow the same to be inspected and extracts to be taken therefrom, shall be guilty of a misdemeanor, and being convicted thereof shall be punished accordingly.]

31. Every Company neglecting to keep such book or books open for inspection as aforesaid, shall forfeit its corporate rights. 24 V., c. 18, s. 29.

32. The Company shall not be bound to see to the execution of any trust, whether express, implied or constructive, in respect to any shares; and the receipt of the shareholder in whose name the same stand in the books of the Company, shall be a valid and binding discharge to the Company for any dividend or money payable in respect of such shares, and whether or not notice of such has been given to the Company; and the Company shall not be bound to see to the application of the money paid upon such receipt. 24 V., c. 18, s. 30.

33. Every contract, agreement, engagement or bargain made, and every bill of exchange drawn, accepted or endorsed, and every promissory note and cheque made, drawn or endorsed on behalf of the Company, by any agent, officer or servant of the Company, in general accordance with his powers as such under the by-laws of the Company affixed to any such contract, agreement, engagement, bargain, bill of exchange, promissory note or cheque, or to prove that the same was made, drawn accepted or endorsed, as the case may be, in pursuance of any by-law, or special vote or order; nor shall the party so acting as agent, officer or servant of the Company, be thereby subjected individually to any liability whatsoever to any third party, therefor;

2. Nothing in this section shall be constructed to authorize the Company to issue any note payable to the bearer thereof, or any promissory note intended to be circulated as money, or as the note of a bank. 24 V., c. 18, s. 31.

34. No Company shall use any of its funds in the purchase of stock in any other corporation, unless in so far as such purchase is specially authorized by the Special Act, and also by the Act creating such other corporation. 24 V., c. 18, s. 32.

35. Each shareholder, until the whole amount of his stock has been paid up, shall be individually liable to the creditors of the Company, or an amount equal to that not paid up thereon; but shall not be liable to an action therefor by any creditor, before an execution against the Company has been returned unsatisfied in whole or in part; and the amount due on such execution shall be the amount recoverable with costs, against such shareholders. 24 V., c. 18, s. 33.

36. The shareholders of the Company shall not as such be held responsible for any Act, default or liability whatsoever, of the Company, or for any engagement, claim, payment, loss, injury, transaction, matter or thing whatsoever, relating to or connected with the Company, beyond the amount of their respective shares in the capital stock thereof. 24 V., c. 18, s. 34.

37. No person holding stock in the Company as an executor, administrator, tutor, curator, guardian or trustee, shall be personally subject to liability as a shareholder, but the estates and funds in the hands of such person, shall be liable in like manner, and to the same extent, as the testator or intestate, or the minor, ward and interdicted person, or the person interested in such trust fund, would be, if living and competent to act, and holding such stock in his own name; and no person holding such stock as collateral security, shall be personally subject to such liability, but the person pledging such stock shall be considered as holding the same, and shall be liable as a shareholder accordingly. 24 V., c. 18, s. 36.

38. Every such executor, administrator, tutor, curator, guardian or trustee, shall represent the stock in his hands, at all meetings of the Company, and may vote accordingly as a shareholder; and every person who pledges his stock may nevertheless represent the same at all such meetings, and may vote accordingly as a shareholder. 24 V., c. 18, s. 36.

39. The Directors of the Company shall be jointly and severally liable upon any and every written contract or undertaking of the Company on the face whereof the word "*Limited*" or the words "*Limited Liability*" are not distinctly written or printed after the name of the Company where first occurring, and also to the labourers, servants and apprentices of the Company, for all the debts not exceeding one year's wages, due for service performed to the Company while they are such Directors respectively; but no Director shall be liable to an action upon any such contract or undertaking or for recovery of any such debt, unless the Company has been sued upon or for the same within one year after the same became exigible, nor yet unless such Director is sued thereon or therefor within one year thereafter; nor yet before an execution against the Company has been returned unsatisfied in whole or in part; and the amount due on such execution shall be the amount recoverable, with costs, against the Directors. 24 V., c. 18, s. 39.

40. If the Directors of the Company declare and pay any dividend when the Company is insolvent, or any dividend the payment of which renders the Company insolvent, or diminishes the capital stock thereof, they shall be jointly and severally liable, as well to the Company as to the individual shareholders and creditors thereof, for all the debts of the Company then existing, and for all thereafter contracted during their continuance in office, respectively; but if any Director present when such dividend is declared, forthwith, or if any Director then absent, within twenty-four hours after he has become aware thereof, and able so to do, enters on the

minutes of the Board of Directors his protest against the same, and within eight days thereafter causes such protest to be published in at least one newspaper published in, or as near as may be possible to the place where the office or chief place of business of the Company is, such Director may thereby, and not otherwise, exonerate himself from such liability. 24 V., c. 18, s. 37.

41. No loan shall be made by the Company to any shareholder, and if such is made, all Directors and other officers of the Company making the same, or in any wise assenting thereto, shall be jointly and severally liable to the Company for the amount of such loan,—and also to third parties, to the extent of such loan with legal interest, for all the debts of the Company contracted from the time of the making of such loan to that of the re-payment thereof. 24 V., c. 18, s. 38.

42. Any description of action may be prosecuted and maintained between the Company and any shareholder thereof. 24 V., c. 18, s. 41.

43. Service of all manner of summons or writ whatever upon the Company, may be made by leaving a copy thereof at the office or chief place of business of the Company, with any grown person in charge thereof, or elsewhere with the President or Secretary thereof; or if the Company has no known office or chief place of business, and has no known President or Secretary, then, upon return to that effect duly made, the Court shall order such publication as it may deem requisite, to be made in the premises, for at least one month, in at least one newspaper; and such publication shall be held to be due service upon the Company. 24 V., c. 18, s. 40.

CHAPTER 150.

AN ACT REPRESENTING THE INCORPORATION OF JOINT STOCK COMPANIES BY LETTERS PATENT.

(Rev. Stats. Ont., Cap. 150.)

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Forfeiture of charter by non-user, s. 63.
Fees on incorporation, s. 64.
Incorporation of existing Companies under this Act, ss. 65, 66.
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HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows :—

1. This Act may be cited as "*The Ontario Joint Stock Companies' Letters Patent Act.*"

2. The following expressions in this Act, and in all letters patent and supplementary letters patent issued under the same, shall have the meaning hereby assigned to them, unless there is something in the subject or context repugnant to such construction, that is to say:

1. "The letters patent" shall mean the letters patent incorporating a Company for any purpose contemplated by this Act;

2. "The supplementary letters patent" shall mean any letters patent granted for the increasing or reducing of the capital stock of such Company;

3. "The Company" shall mean the Company so incorporated by letters patent;

4. "The undertaking" shall mean the whole of the works and business of every kind, which the Company is authorized to carry on;

5. "Real estate" or "land" shall include all immovable real property of every kind;

6. "Shareholder" shall mean every subscriber to, or holder of stock in the Company, and extend to, and include the personal representatives of the shareholder. 37 V., c. 35, s. 2.

3. The Lieutenant-Governor in Council may, by letters patent under the Great Seal, grant a charter to any number of persons, not less than five, who shall petition therefor, constituting such persons and others who may become shareholders in the Company thereby created, a body corporate and politic, for any purposes or objects to which the legislative authority of the Legislature of Ontario extends, except the construction and working of Railways and the business of Insurance. 37 V., c. 35, s. 3.

4. The applicants for such letters patent must give at least one month's previous notice in the *Ontario Gazette*, of their intention to apply for the same, stating therein:

(*a*) The proposed corporate name of the Company, which shall not be that of any other known Company, incorporated or unincorporated, or any name liable to be unfairly confounded therewith, or otherwise on public grounds objectionable;

(*b*) The object for which its incorporation is sought;

(*c*) The place or places within the Province of Ontario, where its operations are to be carried on, with special mention if there be two or more such places, of some one of them as its chief place of business;

(*d*) The amount of its capital stock;

(*e*) The number of shares and amount of each share;

(*f*) The names in full and the address and calling of each of the applicants, with special mention of the names of not less than three of their number, who are to be the first Directors of the Company. 37 V., c. 35, s. 4; 39 V., c. 7, s. 25.

5. At any time, not more than one month after the last publication of such notice, the applicants may petition the Lieutenant-Governor, through the Provincial Secretary, for the issue of such letters patent.

2. Such petition must state the facts required to be set forth in the notice, and must further state the amount of stock taken by each applicant, and also the amount, if any, paid in upon the stock of each applicant.

3. The petition must also state whether such amount is paid in cash or by transfer of property, or how otherwise.

4. In case the petition is not signed by all the shareholders whose names are proposed to be inserted in the letters patent, it shall be accompanied by a memorandum of association, signed by all the persons whose names are to be so inserted, or by their attorneys, lawfully authorized in writing, and such memorandum shall contain the particulars required by the next preceding section.

5. The petition may ask for the embodying in the letters patent, of any provision which otherwise under this Act might be embodied in any by-law of the Company when incorporated. 37 V., c. 35, s. 5.

6. Where a notice has been published according to the rules of the Legislative Assembly for an Act incorporating any Company, the incorporation whereof is sought for objects for which incorporation is authorized by this Act, and a Bill has been introduced into the said Assembly in accordance with such notice, and is subsequently thrown out or withdrawn, then in case a petition to the Lieutenant-Governor for the incorporation under this Act of such Company is filed with the Provincial Secretary within one month from the day of the termination of the Session of the Assembly for which the said notice was given, such notice may be accepted in lieu of the notice required by the fourth section. 40 V., c. 8, s. 64.

7. The Lieutenant-Governor may dispense with the publication of the notice mentioned in section four, in any case in which the capital of the proposed Company is three thousand dollars or under; and in such case the petition to the Lieutenant-Governor shall state the particulars mentioned in section four in addition to the particulars mentioned in section five. 40 V., c. 8, s. 65.

8. Before the letters patent are issued, the applicants must establish to the satisfaction of the Provincial Secretary, or of such other officer as may be charged by order of the Lieutenant-Governor in Council to report thereon, the sufficiency of their notice and petition, and that the proposed name is not the name of any other known incorporated or unincorporated Company.

2. The Provincial Secretary, or such other officer, may for the purposes aforesaid, take and keep of record any requisite evidence in writing under oath or affirmation, and he, or any Justice of the Peace, or Commissioner for taking affidavits in any of the Superior Courts, may administer every requisite oath or affirmation. 37 V., c. 35, s. 6.

9. The letters patent shall recite such of the material averments of the notice and petition so established, as the Lieutenant-Governor may find convenient to insert therein, and the Lieutenant-Governor may, if he thinks fit, give to the Company, a corporate name different from the name proposed by the applicants in the published notice; and the objects of the Company as stated in the letters patent may vary from the objects stated in the said notice, provided the objects of the Company as stated in the letters patent, are of a similar character to those contained in the notice published as aforesaid. 40 V., c. 8, s. 62.

10. Notice of the granting of the letters patent shall be forthwith given by the Provincial Secretary, in the *Ontario Gazette*, in the form of the Schedule A appended to this Act; and from the date of the letters patent the persons therein named and their successors shall be a body corporate and politic by the name mentioned therein. 37 V., c. 35, s. 8.

11. In case it is made to appear that any Company is incorporated under a name the same as, or similar to, that of an existing Company, it shall be lawful for the Lieutenant-Governor in Council to direct the issue of supplementary letters patent reciting the former letters, and changing the name of the Company to some other name to be set forth in the supplementary letters patent; and no such alteration of name shall affect the rights or obligations of the Company; and all proceedings may be continued and commenced by or against the Company by its new name, that might have been continued or commenced by or against the Company by its former name.

2. The Court of Chancery may compel an application under this section whenever a Company improperly assumes the name of, or a name similar to, that of an existing Company. 37 V., c. 35, s. 9.

12. Where a Company heretofore incorporated under *The Ontario Joint Stock Companies Letters Patent Act*, 1874, or incorporated under this Act, is desirous of adopting another name, the Lieutenant-Governor in Council, upon being satisfied that the change desired is not for any improper purpose, may direct the issue of supplementary letters patent reciting the former letters patent, and changing the name of the Company to some other name set forth in the supplementary letters patent. 38 V., c. 23, s. 5.

13. The provisions of this Act relating to matter preliminary to the issue of the letters patent shall be deemed directory only; and no letters patent issued under this Act shall be held void or voidable, on account of any irregularity in any notice prescribed by this Act, or on account of the insufficiency or absence of any such notice, or on account of any irregularity in respect of any other matter preliminary to the issue of such letters patent. 38 V., c. 23, s. 3.

14. Every Company so incorporated may acquire, hold, alienate and convey real estate subject to any restrictions or conditions in the letters patent set forth, and shall forthwith become and be invested with all rights, real and personal, heretofore held by or for the Company under a trust created with a view to its incorporation, and with all the powers, privileges and immunities requisite to the carrying on of its undertaking, as though the Company had been incorporated by a Special Act of the Legislature, making the Company a body politic and corporate, and embodying all the provisions of this Act, and of the letters patent. 37 V., c. 35, s. 10; 40 V., c. 8, s. 63.

15. The Directors of the Company, if they see fit at any time, may make a by-law sub-dividing the existing shares into shares of smaller amount. 37 V., c. 35, s. 11.

16. The Directors of the Company, if they see fit at any time, after the whole capital stock of the Company has been taken up and fifty per centum thereon paid in, but no sooner, may make a by-law for increasing the capital stock of the Company to any amount which they may consider requisite for the due carrying out of the objects of the Company;

2. Such by-law shall declare the number and value of the shares of the new stock; and may prescribe the manner in which the same is to be allotted; and in default of its so doing, the control of such allotment shall be held to vest absolutely in the Directors. 37 V., c. 35, s. 12.

17. The Directors of the Company, if they see fit at any time, may make a by-law for decreasing the capital stock of the Company to any amount which they may consider sufficient for the due carrying out of the undertaking of the Company, and advisable.

2. Such by-law shall declare the number and value of the shares of the stock as so decreased; and the allotment thereof or the rule or rules by which the same is to be made. 37 V., c. 35, s. 13.

3. The liability of shareholders to persons who were, at the time of the reduction of the capital, creditors of the Company, shall remain as though the capital had not been decreased. 37 V., c. 35, 14, (2.)

4. But no by-law for increasing or decreasing the capital stock of the Company, or sub-dividing the shares, shall have any force or effect what-

ever, until after it has been sanctioned by a vote of not less than two-thirds in value of the shareholders at a general meeting of the Company duly called for considering the same, and afterwards confirmed by supplementary letters patent. 37 V., c. 35, s. 14, (1.)

18. At any time not more than six months after such sanction of such by-law, the Directors may petition the Lieutenant-Governor, through the Provincial Secretary, for the issue of supplementary letters patent to confirm the same.

2. With such petition they shall produce such by-law, and establish to the satisfaction of the Provincial Secretary, or of such other officer as may be charged by order of the Lieutenant-Governor in Council, to report thereon, the due passage and sanction of such by-law, and if the petition is in respect of increase or decrease of capital, the *bona fide* character of the increase or decrease of capital thereby provided for, and that notice of the application for supplementary letters patent has been inserted for one month in the *Ontario Gazette*.

3. The Provincial Secretary, or such other officer, may for the purposes aforesaid take and keep of record any requisite evidence in writing, under oath or affirmation; and he, or any Justice of the Peace, or Commissioner for taking affidavits in the Superior Courts, may administer every requisite oath or affirmation. 37 V., c. 35, s. 15.

19. Upon due proof so made, the Lieutenant-Governor in Council may grant such supplementary letters patent under the Great Seal; and notice thereof shall be forthwith given by the Provincial Secretary in the *Ontario Gazette*, in the form of the Schedule B appended to this Act; and thereupon, from the date of the supplementary letters patent, the shares shall be sub-divided, or the capital stock of the Company shall be and remain increased, or decreased, as the case may be, to the amount, in the manner, and subject to the conditions set forth by such by-law; and the whole of the stock, as so increased or decreased, shall become subject to the provisions of this Act, in like manner (so far as may be) as though every part thereof had formed part of the stock of the Company originally subscribed. 37 V., c. 35, s. 16.

20. All powers given to the Company by the letters patent and supplementary letters patent granted in its behalf, shall be exercised subject to the provisions and restrictions contained in this Act. 37 V., c. 35, s. 17.

21. The affairs of every such Company shall be managed by a Board of not less than three Directors. 39 V., c. 7, s. 25.

22. The persons named as such, in the letters patent, shall be the Directors of the Company, until replaced by others duly appointed in their stead. 37 V., c. 35, s. 19.

23. No person shall be elected or appointed as a Director thereafter, unless he is a shareholder, owning stock absolutely in his own right, and not in arrear in respect of any call thereon. 37 V., c. 35, s. 20.

24. The after Directors of the Company shall be elected by the shareholders in general meeting of the Company assembled at some place with in this Province, at such times, in such wise, and for such term, not exceeding two years, as the letters patent, or (in default thereof) the by-laws of the Company may prescribe. 37 V., c. 35, s. 21.

25. In default only of other express provisions in such behalf, by the letters patent or by-laws of the Company;

1. Such election shall take place yearly, all the members of the Board retiring, and (if otherwise qualified) being eligible for re-election;

2. Notice of the time and place for holding general meetings of the Company shall be given at least ten days previously thereto, in some newspaper published at or near as may be to the office or chief place of business of the Company;

3. At all general meetings of the Company, every shareholder shall be entitled to as many votes as he owns shares in the Company, and may vote by proxy;

4. Elections of Directors shall be by ballot;

5. Vacancies occurring in the Board of Directors may, unless the by-laws otherwise direct, be filed for the unexpired remainder of the term, by the Board, from among the qualified shareholders of the Company;

6. The Directors shall, from time to time, elect from among themselves, a President of the Company; and shall also name, and may remove at pleasure, all other officers thereof. 37 V., c. 35, s. 22.

26. If at any time an election of Directors is not made, or does not take effect at the proper time, the Company shall not be held to be thereby dissolved; but such election may take place at any general meeting of the Company duly called for that purpose; and the retiring Directors shall continue in office until their successors are elected. 37 V., c. 35, s. 23.

7. A Company incorporated under this Act may by by-law increase or decrease the number of its Directors, or may change the Company's chief place of business in Ontario.

2. No by-law for either of the said purposes shall be valid or acted upon unless it is sanctioned by a vote of not less than two-thirds in value of the shareholders present, in person or by proxy, at a general meeting duly called for considering the by-law, nor until a copy of such by-law has been certified under the seal of the Company to the Provincial Secretary, and also has been published in the *Ontario Gazette*. 38 V., c. 23, s. 2.

28. The Directors of the Company shall have full power in all things to administer the affairs of the Company; and may make, or cause to be made, for the Company, any description of contract which the Company may by law enter into. 37 V., c. 35, s. 24, *part*.

29. The Directors may, from time to time, make by-laws not contrary to law, or to the letters patent of the Company, or to this Act to regulate—

(*a*) The allotment of stock; the making of calls thereon; the payment thereof; the issue and registration of certificates of stock; the forfeiture of stock for non-payment; the disposal of forfeited stock and of the proceeds thereof; the transfer of stock;

(*b*) The declaration and payment of dividends;

(*c*) The number of the Directors, their term of service, the amount of their stock qualification;

(*d*) The appointment, functions, duties and removal of all agents, officers and servants of the Company; the security to be given by them to the Company; and their remuneration;

(*e*) The time at which, and place where the annual meetings of the Company shall be held; the calling of meetings, regular and special, of the Board of Directors, and of the Company; the quorum; the requirements as to proxies; and the procedure in all things at such meetings;

(*f*) The imposition and recovery of all penalties and forfeitures admitting of regulation by by-law; and

(*g*) The conduct in all other particulars of the affairs of the Company;

and may, from time to time repeal, amend or re-enact the same; but every such by-law, and every repeal, amendment or re-enactment thereof, unless in the meantime confirmed at a general meeting of the Company, duly called for that purpose, shall only have force until the next annual meeting of the Company; and in default of confirmation thereat, shall, at and from that time only, cease to have force; and in that case no new by-law to the same or like effect shall have any force, until confirmed at a general meeting of the Company. 37 V., c. 35, s. 24, *part*.

30. In case a by-law, authorizing the same, is sanctioned by a vote of not less than two-thirds in value, of the said shareholders, then present in person or by proxy, at a general meeting duly called for considering the by-law, the Directors may borrow money upon the credit of the Company, and issue the bonds, debentures, or other securities of the Company, and may sell the said bonds, debentures, or other securities at such prices as may be deemed expedient or be necessary; but no such debentures shal be for a less sum than one hundred dollars;

2. The Directors may, under the like sanction, hypothecate, mortgage, or pledge the real or personal property of the Company, to secure any sum or sums borrowed for the purposes thereof. 37 V., c. 35, s. 25.

31. One-fourth part in value of the shareholders of the Company shall at all times have the right to call a special meeting thereof, for the transaction of any business specified in such written requisition and notice as they may issue to that effect. 37 V., c. 35, s. 24, *part*.

32. A copy of any by-law of the Company, under its seal, and purporting to be signed by any officer of the Company, shall be received as *prima facie* evidence of such by-law in all Courts of Law or Equity in Ontario. 37 V., c. 35, s. 26.

33. The stock of the Company shall be deemed personal estate, and shall be transferable, in such manner only, and subject to all such conditions and restrictions as by this Act, or by the letters patent or by-laws of the Company, may be prescribed. 37 V., c. 35, s. 27.

34. If the letters patent make no other definite provision, the stock of the Company, so far as it is not allotted thereby, shall be allotted when and as the Directors, by by-law or otherwise, ordain. 37 V., c. 35, s. 28.

35. No by-law for the allotment or sale of stock at any greater discount or at any less premium than what has been previously authorized at a general meeting, or for the payment of the President or any Director, shall be valid or acted upon until the same has been confirmed at a general meeting. 37 V., c. 35, s. 24, *part*.

36. The Directors of the Company may call in and demand from the shareholders thereof, respectively, all sums of money by them subscribed, at such times and places, and in such payments and instalments, as the letters patent, or this Act, or the by-laws of the Company require or allow; and interest shall accrue and fall due, at the legal rate for the time being, upon the amount of any unpaid call, from the day appointed for payment of such call. 37 V., c. 35, s. 29.

37. Not less than ten per centum upon the allotted stock of the Company shall, by means of one or more calls, be called in and made payable within one year from the incorporation of the Company; the residue, when and as the by-laws of the Company direct. 37 V., c. 35, s. 30.

38. The Company may enforce payment of all calls and interest thereon, by action in any Court of competent jurisdiction; and in such action it shall not be necessary to set forth the special matter, but it shall be sufficient to declare that the defendant is a holder of one share or more, stating the number of shares, and is indebted in the sum of money to which the calls in arrear amount, in respect of one call or more upon one share or more, stating the number of calls and the amount of each, whereby an action has accrued to the Company under this Act; and a certificate under

the seal, and purporting to be signed by any officer of the Company, to the effect that the defendant is a shareholder, that such call or calls has or have been made, and that so much is due by him and unpaid thereon, shall be received in all Courts of Law and Equity as *prima facie* evidence to that effect. 37 V., c. 35, s. 31.

39. If, after such demand or notice as by the letters patents or by-laws of the Company is prescribed, any call made upon any share or shares is not paid within such time as by such letters patent or by-laws may be limited in that behalf, the Directors, in their discretion, by vote to that effect, reciting the facts, and duly recorded in their minutes, may summarily forfeit any shares whereon such payment is not made; and the same shall thereupon become the property of the Company, and may be disposed of as by by-laws or otherwise the Company may ordain. 37 V., c. 35, s. 32,

40. No share shall be transferable, until all previous calls thereon have been fully paid in, or until declared forfeited for non-payment of calls thereon. 37 V., c. 35, s. 33.

. No shareholder being in arrear in respect of any call shall be entitled to vote at any meeting of the Company. 37 V., c. 35, s. 34.

42. The Company shall cause a book or books to be kept by the Secretary, or by some other officer especially charged with that duty, wherein shall be kept recorded—

(*a*) A copy of the letters patent incorporating the Company, and of any supplementary letters patent for increasing or decreasing the capital stock thereof, and of all by-laws thereof;

(*b*) The names, alphabetically arranged, of all persons who are or have been shareholders;

(*c*) The address and calling of every such person while such shareholder;

(*d*) The number of shares of stock held by each shareholder;

(*e*) The amounts paid in, and remaining unpaid, respectively, on the stock of each shareholder;

(*f*) All transfers of stock, in their order as presented to the Company for entry, with the date and other particulars of each transfer, and the date of the entry thereof; and

(*g*) The names, addresses and calling of all persons who are or have been Directors of the Company; with the several dates at which each person became or ceased to be such Director. 37 V., c. 35, s. 35.

43. The Directors may refuse or allow the entry into any such book of any transfer of stock whereon any call has been made which has not been paid in. 37 V., c. 35, s. 36.

44. No transfer of stock, unless made by sale under execution, shall be valid for any purpose whatever save only as exhibiting the rights of the parties thereto towards each other, and as rendering the transferee liable *ad interim* jointly and severally with the transferor to the Company and their creditors, until the entry thereof has been duly made in such book or books. 37 V., c. 35, s. 37.

45. Such books shall, during reasonable business hours of every day, except Sundays and holidays, be kept open for the inspection of shareholders and creditors of the Company, and their personal representatives, at the office or chief place of business of the Company; and every such shareholder, creditor or representative, may make extracts therefrom. 37 V., c. 35, s. 38.

46. Such books shall be *prima facie* evidence of all facts purporting to be thereby stated, in any suit or proceeding against the Company or against any shareholder. 37 V., c. 35, s. 39.

47. No Director, officer or servant of the Company, shall knowingly make or assist to make any untrue entry in any such book, or shall refuse or neglect to make any proper entry therein; and any person violating the provisions of this section shall, besides any criminal liability which he may thereby incur, be liable in damages for all loss or injury which any person interested may have sustained thereby. 37 V., c. 35, s. 40.

48. Any Director or officer who refuses to permit any person entitled thereto to inspect such book or books, or make extracts therefrom, shall forfeit and pay to the party aggrieved the sum of one hundred dollars; and in case the amount is not paid within seven days after the recovery of judgment, the Court in which the judgment is recovered, or a Judge thereof, may direct the imprisonment of the offender for any period not exceeding three months, unless the amount with costs is sooner paid. 37 V., c. 35, s. 41.

49. Every Company incorporated under this Act shall on or before the first day of February, in every year, make a list in triplicate (verified as is hereinafter required) of all persons who on the thirty-first day of December previously, were shareholders of the Company; and such list shall state the names alphabetically arranged, and the addresses and callings of all such persons, the amount of stock held by them, and the amount unpaid thereon; and shall also make out a summary, verified as hereinafter required, of the state of the affairs of the Company, on the thirty-first day of December preceding.

2. Such summary shall contain the following particulars:—

Firstly—The names and residences and post office addresses of the Directors, Secretary, and Treasurer of the Company;

Secondly—The amount of the capital of the Company and the number shares into which it is divided;

Thirdly—The number of shares taken from the commencement of the Company up to the thirty-first day of December preceding the date of the summary;

Fourthly—The amount of stock (if any) issued free from call; if none is so issued, this fact to be stated;

Fifthly—The amount issued subject to call;

Sixthly—The amount of calls made on each share;

Seventhly—The total amount of calls received;

Eighthly—The total amount of calls unpaid;

Ninthly—The total amount of shares forfeited;

Tenthly—The total amount of shares which have never been allotted or taken up;

Eleventhly—The total amount for which shareholders of the Company are liable in respect of unpaid stock held by them;

Twelfthly—The said summary may also, after giving the information hereinbefore required, give in a concise form, such further information respecting the affairs of the Company, as the Directors may consider expedient.

3. The said list and summary, and every duplicate thereof required by this Act, shall be written or printed on only one side of the sheet or sheets of paper containing the same.

4. The said list and summary shall be verified by the affidavit of the President and Secretary, and if there are no such officers, or they, or either of them are or is at the proper time, out of this Province, or otherwise unable to make the same, by the affidavit of the President or Secretary and one of the Directors, or two of the Directors, as the case may require; and if the President or Secretary does not make or join in the affidavit, the reason thereof shall be stated in the substituted affidavit.

5. One of the duplicate lists and summaries, with the affidavit of verification, shall be posted in the head office of the Company in Ontario, on or before the second day of February; and the Company shall keep the same so posted, until another list and summary are posted under the provisions of this Act; and the other two triplicate lists and summaries of verification shall be deposited with the Provincial Secretary, on or before the eighth day of February next after the time hereinbefore fixed for making the summary.

6. If any Company makes default in complying with the provisions of this section, such Company shall incur a penalty of twenty dollars for every day during which such default continues, and every Director, Manager or Secretary of the Company, who knowingly and wilfully authorizes or permits such default, shall incur the like penalty. 37 V., c. 35, s. 42.

50. The Company shall not be bound to see to the execution of any trust, whether express, implied or constructive, in respect of any share; and the receipt of the shareholder in whose name the same stands in the books of the Company shall be a valid and binding discharge to the Company for any dividend or money payable in respect of such share, whether or not notice of such trust has been given to the Company; and the Company shall not be bound to see to the application of the money paid upon such receipt. 37 V., c. 35, s. 43.

51. Every contract, agreement, engagement or bargain made and ev bill of exchange drawn, accepted or endorsed, and every promissory note and cheque made, drawn or endorsed on behalf of the Company by any agent, officer or servant of the Company, in general accordance with his powers as such under the by-laws of the Company, shall be binding upon the Company; and in no case shall it be necessary to have the seal of the Company affixed to any such contract, agreement, engagement, bargain, bill of exchange, promissory note or cheque, or to prove that the same was made, drawn, accepted or endorsed, as the case may be, in pursuance of any by-law, or special vote or order; nor shall the party so acting as agent, officer or servant of the Company, be thereby subjected individually to any liability whatsoever to any third party therefor

2. Nothing in this Act shall be construed to authorize the Company to issue any note payable to the bearer thereof, or any promissory note intended to be circulated as money, or as the note of a bank, or to engage the business of Banking or Insurance. 37 V., c. 35, s. 44.

52. No Company shall use any of its funds in the purchase of stock in any other corporation, unless expressly authorized by by-law confirmed at a general meeting. 37 V., c. 35, s. 45.

53. Each shareholder, until the whole amount of his stock has been paid up, shall be individually liable to the creditors of the Company, to an amount equal to that not paid up thereon, but shall not be liable to an action therefor by any creditor, before an execution against the Company has been returned unsatisfied in whole or in part; and the amount due on such execution shall, subject to the provisions of the next section, be the amount recoverable with costs, against such shareholders.

2. Any shareholder may plead, by way of defence, in whole or in part, any set-off which he could set up against the Company, except a claim for unpaid dividends, or a salary, or allowance as a President or Director. 37 V., c. 35, s. 46.

54. The shareholders of the Company shall not as such be held responsible for any act, default, or liability whatsoever, of the Company, or for any engagement, claim, payment, loss, injury, transaction, matter or thing whatsoever, relating to or connected with the Company, beyond the unpaid amount of their respective shares in the capital stock thereof. 37 V., c. 35, s. 47.

55. No person holding stock in the Company as an executor, administrator, tutor, curator, guardian or trustee, shall be personally subject to liability as a shareholder; but the estates and funds in the hands of such person shall be liable in like manner, and to the same extent, as the testator or intestate or the minor, ward or interdicted person, or the person interested in such trust fund, would be, if living and competent to act and holding such stock in his own name; and no person holding such stock as collateral security, shall be personally subject to such liability, but the person pledging such stock shall be considered as holding the same and shall be liable as a shareholder accordingly. 37 V., c. 35, s. 48.

56. Every such executor, administrator, tutor, curator, guardian, or trustee, shall represent the stock in his hands, at all meetings of the Company, and may vote accordingly as a shareholder; and every person who pledges his stock may nevertheless represent the same at all such meetings, and may vote accordingly as a shareholder. 37 V., c. 35, s. 49.

57. The Directors of the Company shall not declare or pay any dividend when the Company is insolvent, or any dividend the payment of which renders the Company insolvent, or diminishes the capital stock thereof, but if any Director present when such dividend is declared, forthwith, or if any Director then absent, within twenty-four hours after he has become aware thereof and able so to do, enters on the minutes of the Board of Directors his protest against the same, and within eight days thereafter causes such protest to be published in at least one newspaper published at or as near as may be possible to, the office or chief place of business of the Company, such Director may thereby, and not otherwise, exonerate himself from liability. 37 V., c. 35, s. 50

58. No loan shall be made by the company to any shareholder, and if such is made, all Directors and other officers of the Company making the same, or in anywise assenting thereto, shall be jointly and severally liable to the Company for the amount of such loan, and also to third parties, to the extent of such loan with legal interest, for all debts of the Company contracted from the time of the making of such loan to that of the repayment thereof: But this section shall not apply to a Building Society, or to a Company incorporated for the loan of money, in any matter to which the authority of this Legislature or the meaning of this Act applies. 37 V., c. 35, s. 51.

59. The Directors of the Company shall be jointly and severally liable to the labourers, servants and apprentices thereof, for all debts not exceeding one year's wages due for services performed for the Company while they are such Directors respectively; but no Director shall be liable to an action therefor, unless the Company has been sued therefor within one year after the debt became due, nor yet unless such Director is sued therefor within one year from the time when he ceased to be such Director, nor yet before an execution against the Company has been returned unsatisfied in whole or in part; and the amount due on such execution shall be the amount recoverable with costs against the Directors. 37 V., c. 35, s. 52.

60. Service of all manner of summons or writ whatever upon the Company may be made by leaving a copy thereof at the office or chief place of business of the Company, with any grown person in charge thereof, or elsewhere with the President or Secretary thereof; or if the Company has no known office or chief place of business, and has no known President or Secretary, then upon return to that fact duly made, the Court shall order such publication as it may deem requisite to be made in the premises, for at least one month, in at least one newspaper; and such publication shall be held to be due service upon the Company. 37 V., c. 35, s. 53.

61. Any description of action may be prosecuted and maintained between the Company and any shareholder thereof. 37 V., c. 35, s. 54.

62. In an action or other legal proceeding, it shall not be requisite to set forth the mode of incorporation of the Company, otherwise than by mention of it under its corporate name, as incorporated by virtue of letters patent, or of letters patent and supplementary letters patent, as the case may be, under this Act; and the letters patent or supplementary letters patent themselves, or any exemplification or copy thereof under the Great Seal, shall be conclusive proof of every matter and thing therein set forth. 37 V., c. 35, s. 55.

63. The charter of the Company shall be forfeited by nonuser during three consecutive years at any one time, or if the Company does not go into actual operation within three years after it is granted: and no declaration of such forfeiture by any Act of the Legislature shall be deemed an infringement of such charter. 37 V., c. 35, s. 56.

64. The Lieutenant-Governor in Council may from time to time establish, alter, and regulate the tariff of the fees to be paid on applications for letters patent and supplementary letters patent under this Act; may designate the Department or Departments through which the issue thereof shall take place; and may prescribe the forms of proceeding and record in respect thereof, and all other matters requisite for carrying out the objects of this Act.

2. Such fees may be made to vary in amount, under any rule or rules—as to nature of Company, amount of capital, and otherwise—that may be deemed expedient,

3. No step shall be taken in any Department towards the issue of any letters patent or supplementary letters patent under this Act, until all fees therefor are duly paid. 37 V., c. 35, s. 58.

65. Any Company for purposes or objects within the scope of this Act, heretofore incorporated, whether under a Special or a General Act, and now being a subsisting and valid corporation, may apply for letters patent under this Act; and the Lientenant-Governor in Council, upon proof that notice of the application has been inserted for four weeks in the *Ontario Gazette*, may direct the issue of letters patent incorporating the share-

holders of the said Company as a Company under this Act, and thereupon all the rights or obligations of the former Company shall be transferred to the new Company, that might have been continued or commenced by or against the old Company,, and it shall not be necessary in any such letters patent to set out the names of the shareholders; and after the issue of the letters patent, the Company shall be governed in all respects by the provisions of this Act, except that the liability of the shareholders to creditors of the old Company shall remain as at the time of the issue of the letters patent. 37 V., c. 35, s. 60.

66. Where a subsisting Company applies for the issue of letters patent under the provisions of the preceding section, the Lieutenant-Governor may by the letters patent extend the powers of the Company to such other objects within the scope of this Act as the applicants desire, and as the Lieutenant-Governor thinks fit to include in the letters patent, and may by the said letters patent name the first Directors of the new Company, and the letters patent may be to the new Company by the name of the old Company or by any other name. 38 V., c. 23, s. 1.

67. Proof of any matter which may be necessary to be made under this Act, may be made by affidavit before any Justice of the Peace or Commissioner for taking affidavits, who are hereby authorized and empowered to administer oaths for that purpose. 37 V., c. 35, s. 62.

68. The Company shall be subject to the provisions of any Act of the Legislature for the winding up of Joint Stock Companies. 37 V., c. 35, s. 63.

SCHEDULE "A."

(*Section* 10.)

NOTICE OF GRANTING LETTERS PATENT.

Public notice is hereby given, that under "*The Ontario Joint Stock Companies' Letters Patent Act*," Letters Patent have been issued under the Great Seal of the Province of Ontario, bearing date the day of incorporating [*here state name, address and calling of each corporator named in the Letters Patent*], for the purpose of [*here state the undertaking of the Company, as set forth in the Letters Patent*] by the name of [*here state the name of the Company in the Letters Patent*], with a total capital stock of dollars, divided into shares of dollars each.

Dated at the office of the Provincial Secretary of Ontario, this day of

A. B.,
Provincial Secretary.

SCHEDULE "B."

(*Section* 19.)

NOTICE OF GRANTING SUPPLEMENTARY LETTERS PATENT.

Public notice is hereby given, that under "*The Ontario Joint Stock Companies Letters Patent Act*," Supplementary Letters Patent have been this day issued under the Great Seal of the Province of Ontario, bearing date the day of whereby the total capital stock of [*here state the name of the Company*] is increased [*or* decreased, *as the case may be*] from dollars to dollars, [*or* whereby the capital stock of the Company of shares of dollars each is subdivided into shares of dollars each.]

Dated at the office of the Provincial Secretary of Ontario, this day of

A. B.,
Provincial Secretary.

CHAPTER 153.

AN ACT RESPECTING JOINT STOCK COMPANIES FOR THE CONSTRUCTION OF WORKS TO FACILITATE THE TRANSMISSION OF TIMBER DOWN RIVERS AND STREAMS.

(Rev. Stats. Ont., Cap. 153.)

Incorporations, ss. 1-7.
Conditions to be performed before commencing works, ss. 8-11.
By-laws, ss. 12-15.
Directors, ss. 16-26.
Annual Report to the Commissioner of Public Works, s. 27.
Books to be kept, s. 28.
Extension of the works or capital, ss. 29-32.
Calls on stock, ss. 33-40.
Arbitration proceedings to ascertain compensation for lands taken, &c., by Co., ss. 41-52
Company not to take mill sites without consent of owner, s. 53.
Where no damages recoverable for overflowing lands, s. 54.
Company not to obstruct navigable waters, s. 55.
Rights as to water powers created by Company's works, s. 56.
Tolls, ss. 57-65.

OFFENCES AND PENALTIES:
Malicious injury to works, C. S. C., c. 68, *s.* 67, *p.* 1393.
Impeding operations of Company, s. 66.
Recovery of penalties, ss. 67-69.
Appropriaton of penalties, s. 70.
Limitation of actions against persons acting under this Act, s. 71.

MISCELLANEOUS:
Time for completion of works, s. 72.
Repair of works, s. 73.
Union of Companies, s. 74.
Dissolution of Company, s. 75.

HER MAJESTY, by and with the advice of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Any number of persons not less than five may form themselves into a Company under the provisions of this Act, for the purpose of acquiring or constructing and maintaining any dam, slide, pier, boom or other work necessary to facilitate the transmission of timber down any river or stream in this Province, and for the purpose of blasting rocks, or dredging or removing shoals or other impediments, or otherwise improving the navigation of such streams for the said purpose. C. S. C., c. 68, s. 1.

2. Each share in the Company shall be twenty dollars, and shall be regarded as personal property, and shall be transferable upon the books of the Company, in the manner provided by a by-law to be made by the Directors in that behalf. C. S. C., c. 68, s. 2.

3. No such Company shall construct any such works over or upon or otherwise interfere with or injure any private property or the property of the Crown, without first having obtained the consent of the owner, or occupier thereof, or of the Crown, except as hereinafter provided. C. S. C., c. 68, s. 3.

4. No such Company shall be formed under the provisions of this Act to improve any river or stream, for the improvement of which any other Company has been formed either under this Act or any other Act of the Legislature, or upon which there is constructed any Provincial work, without the consent of such other Company, or of the Lieutenant-Governor in Council respectively, which consent shall be formally expressed in writing, and shall be registered, together with the instrument by which such Company has been incorporated, as hereinafter provided. C. S. C., c. 68, s. 4.

5. In case five or more persons, having formed themselves into a Company under this Act, have subscribed stock to an amount adequate in their judgment to the construction of the intended work, they shall execute an instrument in duplicate according to the form in the Schedule of this Act; and the Company or one of their number, or the Directors named in the said instrument, shall pay to the Treasurer of the Company six per cent. upon the amount of the capital stock of the Company mentioned in the said instrument, and shall register the instrument, together with a receipt from the Treasurer of the Company, for the payment or instalment of six per cent., and also the approval in writing of the Commissioner of Public Works mentioned in the tenth section of this Act. C. S. C., c. 68, s. 5.

6. Registration shall be made by leaving one of the original instruments and the receipt of the approval aforesaid, with the Registrar of any one County or other Registration Division in which the intended works are wholly or partly situated, or are intended to be made, and such Registrar shall copy the said instrument, receipt and approval into a book to be provided by him for that purpose, and shall afterwards retain and file the said original documents in his office, and for such registration the Registrar shall be entitled to charge the same fees as for the registration of a deed. C. S. C., c. 68, s. 6.

7. In all cases where a shareholder has not paid six per cent. on the share or shares held by him, but some other party pays the same on his behalf, the party so paying may recover the amount as a debt, in any competent Court, although not previously authorized to pay the money on behalf of such shareholder. C. S. C., c. 68, s. 7.

8. Every Company, before commencing any of the works in its contemplation, shall cause a Report to be laid before the Commissioner of Public Works, and a Copy of such report before the Municipal Council of the County in which such works are proposed to be situated; or if the works are situate in more than one County, then before the Municipal Councils

of the Counties in or on the boundaries of which such works are proposed to be situated; or if such proposed works are in unsurveyed lands not contained within the bounds of any County, then before the Commissioner of Public Works alone. C. S. C., c. 68, s. 8.

9. The report shall contain—

1. A copy of the instrument by which the Company is incorporated;

2. A detailed description of the works to be undertaken, and an estimate of their cost;

3. An estimate from the best available sources of the quantity of different kinds of timber expected to come down the river yearly after the works have been completed; and

4. A Schedule of the tolls proposed to be collected. C. S. C., c. 68, s. 9.

10. The Company shall not commence any such works until the approval of the Commissioner of Public Works has been signified in writing, or until after the expiration of thirty days from the laying the report or reports aforesaid before the Municipal Council or Councils (as the case may be), although the approval of the Commissioner of Public Works has been signified in writing before the expiration of that period. C. S. C., c. 68, s. 10.

11. When the requirements contained in the preceding sections have been complied with, the Company shall become a chartered and incorporated Company, by the name designated in the instrument so to be registered as aforesaid; and by such name they and their successors shall be capable of purchasing, holding and conveying, selling and departing with any lands, tenements and herditaments whatsoever, which may be useful and necessary for the purposes of the Corporation; and every such work as aforesaid; and all the materials from time to time provided for constructing, maintaining or repairing the same, shall be vested in such Company and their successors. C. S. C., c. 68, s. 11.

12. Every such Company may make by-laws, and from time to time alter and amend the same, for the purpose of regulating the safe and orderly transmission of timber over or through the works of the Company, and the navigation therewith connected. C. S. C., c. 68, s. 12,

13. Copies of such by-laws shall be annexed to the reports required to be made by the Company by the eighth and ninth sections of this Act, and copies of all new by-laws and of all amended by-laws shall be annexed to the annual reports required by the twenty-seventh section of this Act. C. S. C., c. 68, s. 13.

14. No such by-law or amended by-law shall have any force until one month after it has been included in such report; but if at the end of one

month such by-law has not been disallowed, as it may be by the Commissioner of Public Works, it shall have full force and be binding upon the Company and upon all persons using the works. C. S. C., c. 68, s. 14.

15. No such by-law shall impose any penalties or shall contain anything contrary to the true meaning and intention of this Act. C. S. C., c. 68, s. 15.

16. The affairs, stock, property and concerns of every such Company shall, for the first year, be managed and conducted by five Directors, to be named in the instrument so to be registered as aforesaid, and thereafter to be annually elected by the shareholders, on the second Monday of December, according to the provisions of a by-law to be passed by the Directors for that purpose. C. S. C., c. 68, s. 16.

17. Such by-law shall regulate—

1. The manner of voting;

2. The place and hour of meeting for the election of Directors; and

3. Any other matters, except the day of election, which the Directors deem necessary to carry out the provisions of this and the last preceding section. C. S. C., c. 68, s. 17.

18. Such by-law shall be published for three successive weeks in the newspaper or one of the newspapers, nearest the place where the Directors of the Company usually meet for the transaction of business. C. S. C., c. 68, s. 18.

19. The Directors may alter, change, or amend any such by-law, and such amended by-law shall be published in the manner above provided. C. S. C., c. 68, s. 19.

20. If the annual election of Directors does not take place at the time appointed, the Company shall not thereby be dissolved, but the Directors for the time being shall in that case continue to serve until another election of Directors has been held. C. S. C., c. 68, s. 20.

21. Another election when necessary shall be held within one month after the time appointed by law, and at a time which shall be provided for by by-law to be passed by the Directors of the Company for that purpose. C. S. C., c. 68, s. 21.

22. At any election of Directors, each shareholder shall be entitled to one vote for every share he holds in the Company, and upon which he is not in arrear on any call in respect thereof. C. S. C., c. 68, s. 22.

23. Any person being a shareholder and not in arrear as aforesaid, shall be eligible as a Director. C. S. C., c. 68, s. 23.

24. A majority of the Directors shall be a *quorum* for the transaction of business. C. S. C., c. 68, s. 24.

25. The Directors may elect one of their number to be the President, and may nominate and appoint such officers and servants as they deem necessary; and in their discretion may take security from such officers and servants respectively for the due performance of their duties, and that they will duly account for all moneys coming into their hands to the use of the Company. C. S. C., c. 68, s. 25.

26. If any vacancy happens amongst the Directors during the current year of their appointment, such vacancy shall be filled up for the remainder of the year by a person nominated by a majority of the remaining Directors, unless it is otherwise provided by some by-law or regulation of the Company. C. S. C., c. 68, s. 26.

27. The Directors of every Company incorporated under this Act shall annually in the month of January make a report to the Commissioner of Public Works, which report shall be under the oath of the Treasurer of the Company, and shall specify—

1. The cost of the work;

2. The amount of money expended;

3. The amount of capital stock, and how much paid in

4. The whole amount of tolls expended on such work;

5. The amount received during the year from tolls and all other sources stating each separately, and distinguishing the tolls on different kinds of timber;

6. The amount of dividends paid;

7. The amount expended for repairs; and

8. The amount of debts due by the Company, specifying the objects for which the debts respectively were incurred. C. S. C., c. 68, s. 27.

28. Every Company shall keep regular books of accounts, in which shall be entered a correct statement of the assets, receipts and disbursements of the Company, and such books shall be at all times open to the inspection and examination of any shareholder or any person for that purpose appointed by the Commissioner of Public Works, and every such Inspector may take copies or extracts from the same, and may require and receive from the keeper of such books, and also from the President and each of the Directors of the Company, and all the other officers and servants thereof, all such information as to such books, and the affairs of the Company generally, as the Inspector deems necessary for the full and

satisfactory investigation into and report upon the state of the affairs of the Company, so as to enable such Inspector to ascertain whether the tolls levied upon such work are greater than this Act allows to be levied. C. S. C., c. 68, s. 28.

29. If at any time after the formation of any such Company, the Directors are of opinion that it is desirable to alter, improve or extend the said work, or that the original capital subscribed will not be sufficient to complete the work contemplated, the said Directors, under a resolution to be passed by them for that purpose, may issue debentures, for sums not less than one hundred dollars each, signed by the President and countersigned by the Treasurer of the Company, and not exceeding in the whole one fourth of their paid-up capital, or may borrow upon security of the Company, by bond or mortgage of the works and tolls thereon a sufficient sum to complete the same, or may authorize the subscription of such number of additional shares as may be named in their resolution, a copy whereof, under the hand of the President and seal of the Company, shall be engrossed at the head of the subscription list to be opened for subscribers to the additional shares. C. S. C., c. 68, s. 29.

30. When such a number of new shares have been subscribed as the Directors deem it desirable to have registered, the President shall deliver such new list of subscribers to the Registrar who has custody of the original instrument, and he shall attach such new list of subscribers thereto, and such list shall thenceforth be held and taken to be part and parcel of the said instrument. C. S. C., c. 68, s. 30.

31. All the subscribers to such list, and those who afterwards enter their names as subscribers thereon, with the consent of the Directors, signified by a resolution of the Board under the hand of the President and seal of the Company, shall be subject to all the liabilities and entitled to all the rights, benefits, privileges and advantages of original subscribers, as well with respect to the first works undertaken as to any extension or alteration thereof as aforesaid, and such list and the subscriptions thereon shall thenceforth be considered as part and parcel of the original undertaking. C. S. C., c. 68, s. 31.

32. Such additional shares and stock shall be called in, demanded and recovered, in the same manner and under the same penalties as provided or authorized in respect of the original shares or stock of the Company. C. S. C., c. 68, s. 32.

33. The Directors may call in and demand from the shareholders of the Company respectively, all sums of money by them subscribed, at such time and in such payments or instalments, not exceeding ten per cent. at any one time, as the Directors deem proper, upon notice requiring such payment, published for four successive weeks in the newspaper or one of the newspapers nearest the place where the Directors of the Company usually meet for the transaction of business. C. S. C., c. 68, s. 33.

34. Any shareholder neglecting or refusing to pay a rateable share of the calls as aforesaid, for the space of two months after the time appointed for the payment thereof, shall forfeit his shares, which forfeiture shall go to the Company for the benefit thereof. C. S. C., c. 68, s. 34.

35. No advantage shall be taken of the forfeiture, unless the stock is declared to be forfeited at a general meeting of the Company, assembled at any time after such forfeiture has been incurred. C. S. C., c. 68, s. 35.

36. Such a forfeiture shall be an indemnification to the shareholder so forfeiting, against all actions, or prosecutions whatever, for any breach of contract or other agreement between such shareholder and the other shareholders with regard to carrying on such undertaking. C. S. C., c. 68, s. 36.

37. The Company may, in any Court having jurisdiction in matters of simple contract to the amount demanded, sue for, and recover of or from any shareholder in the Company, the amount of any call or calls of stock which such shareholder has neglected to pay after public notice thereof for two weeks in the newspaper, or one of the newspapers, published nearest the place where the Directors of the Company usually meet for the transaction of business. C. S. C., c. 68, s. 37.

38. In any suit by the Company, against a shareholder, brought to recover the money due for any call, it shall not be necessary to set forth the special matter, but it shall be sufficient for the Company to aver that the defendant is the holder of one share or more, stating the number of shares in the stock of the Company, and that he is indebted to the Company in the sum of money to which the calls in arrear amount, in respect of one call or more upon one share or more (stating the number and amount of each of such calls), whereby an action has accrued to the Company, by virtue of this Act. C. S. C., c. 68, s 38.

39. On the trial or hearing of any such suit, it shall be sufficient for the Company to prove that the defendant, at the time of making the call, was a holder of one share or more in the undertaking (of which when there has been no transfer of the shares, proof of the subscription to the original agreement to take stock shall be sufficient evidence to the amount subscribed), and to prove that such call was in fact made, and such notice thereof given as is required; whereupon the Company shall be entitled to recover the amount due upon such call, with interest thereon, unless it appears that due notice of such call was not given, and it shall be necessary for the Company to prove the appointment of the Directors who made the call, or any other matter whatever. C. S. C., c. 68, s. 39.

40. The oath of the Treasurer shall be deemed sufficient proof of such notice, and a copy thereof shall be filed in the office of the Clerk of the Court where the trial takes place. C. S. C., c. 68, s. 40.

41. If upon demand made by the Directors of the Company the owner

or occupier of any land, over, through or upon which the Company desires to construct any such work, or which would be flooded or otherwise interfered with, or upon which any power is given by this Act to the Company is intended to be exercised, neglects or refuses to agree upon the price or amount of damages to be paid for, or for passing through or using such land, or for flooding or otherwise interfering with the same, and for appropriating the same to and for the use of the Company, or for the exercise of any such power aforesaid, the Company may name one Arbitrator, and the owner or occuper of such land may name another Arbitrator, and the said two Arbitrators may name a third, to arbitrate and determine upon the amount which the Company shall pay before taking possession of or exercising such power, and the decision of any two of the said Arbitrators shall be final. C. S. C., c. 68, s. 41.

42. In ascertaining the amount aforesaid, due attention shall be had by the Arbitrators to the benefits which will accrue to the party demanding compensation, by the construction of the intended works. C. S. C., c. 68, s. 42.

43. The Company may tender the sum awarded to the party claiming compensation, who shall thereupon be bound to execute a conveyance of the land to the Company, or such other document as may be requisite; and the Company, after such tender, whether a conveyance or other document has been executed or not, may enter upon and take possession of the land, to and for the uses of the Company, and may hold the same, or exercise such power aforesaid in the same manner as if a conveyance thereof or other document had been executed. C. S. C., c. 68, s. 43.

44. If any such owner or occupier neglects to name an Arbitrator for the space of twenty days, after having been notified so to do by the Company, or if the said two Arbitrators do not within the space of twenty days after the appointment of such second Arbitrator agree upon a third Arbitrator, or if any one of the said Arbitrators refuses or neglects, within the space of ten days after his appointment, to take upon himself the duties thereby imposed, then, upon the application of the Company, or of the other party, the Judge of the County Court of the County within which the land lies, shall nominate a disinterested competent person, from any Township adjoining the Township in which such land is situate, to act in the place of the Arbitrator so refusing or neglecting; and every Arbitrator so appointed by the Judge of the County Court, shall hear and determine the matter to be submitted to him, with all convenient speed, after he has been so nominated as aforesaid; and any award made by a majority of the Arbitrators shall be as binding as if the three Arbitrators had concurred in and made the same. C. S. C., c. 68, s. 44

45. In case any lands required by the Company for the purpose of any such work, or with regard to which any such power is to be exercised as aforesaid, are held or owned by any person, body politic, corporate or collegiate, whose residence is not within this Province or is unknown to the

Company, or in case the title to any such lands is in dispute, or in case such lands are mortgaged, or in case the owner or owners of such lands are unknown, or unable to treat with the Company for the sale thereof, or the exercise of any such power as aforesaid by the Company, or to appoint Arbitrators as aforesaid, the Company may nominate and appoint one indifferent person and the Judge of the County Court where such lands are situate, on the application of the Company, may nominate and appoint one other disinterested competent person from any Township adjoining the Township in which such lands are situate, who, together with one other person to be chosen by the persons so named before proceeding to business or in the event of their disagreeing as to the choice, with one other person to be appointed by such Judge as aforesaid before the others proceed to business, shall be Arbitrators to award, determine, adjudge and order the respective sums of money which the Company shall pay to the party entitled to receive the same, for the said lands or damages as aforesaid, and the decision of a majority of such Arbitrators shall be binding. C. S. C., c. 68, s. 45.

46. When demanded, the Company shall pay or cause to be paid to the several parties entitled to the same, the amount so awarded. C. S. C., c. 68, s. 46.

47. A record of the award shall be made up and signed by the Arbitrators, or a majority of them, specifying the amount awarded and the costs of arbitration, which may be settled by the said Arbitrators, or a majority of them; and such record shall be deposited in the Registry Office of the County or other Registration Division in or along which such lands are situate, and the Company may thereupon enter and take possession of such land to and for the uses of the Company, and may proceed with the construction of the works affecting the same. C. S. C., c. 68, s. 47.

48. The expenses of any Arbitration under this Act shall be paid by the Company, and by them be deducted from the amount of the award on payment thereof to the parties entitled to receive the same, if the Company, before the appointment of their Arbitrator, had tendered an equal or greater sum than that awarded by the Arbitrators, otherwise such expense shall be borne by the Company, and the Arbitrators shall specify in their award by which of the parties the said costs shall be paid. C. S. C., c. 68, s. 48.

49. All lands taken by the Company, for the purpose of any such work, and which have been purchased and paid for by the Company, in the manner hereinbefore provided, shall become the property of the Company, free from all mortgages, incumbrances and other charges. C. S. C., c. 68, s. 49.

50. The Arbitrators so appointed shall fix a convenient day for hearing the respective parties, and shall give eight days' notice at least of the day and place; and having heard the parties or otherwise examined into the merits of the matter so brought before them, the said Arbitrators or a

majority of them shall, within thirty days of their appointment, make their award or arbitrament thereupon in writing, which award or arbitrament shall be final as to the amount in dispute. C. S. C., c. 68, s. 51.

51. In case there is already established by any party other than a Company formed under this Act or some other Act of the late Province of Canada, or of this Province, any slide, pier, boom, or other work intended to facilitate the passage of timber down any water, for the improvement of which a Company is formed under this Act, such Company may take possession of the works, and the owners thereof, or (if they have been constructed on the property of the Crown) the persons at whose cost they have been constructed, may claim a compensation for the value of such works either in money or in stock of such Company, at the option of such owner or the person at whose cost the same was constructed, and may become shareholders in the said Company for an amount equal to the value of such works (such value to be ascertained by Arbitrators appointed in the manner hereinbefore provided); and all the provisions of the forty-fifth to the forty-ninth sections of this Act shall apply to such work and the proprietors and possessors thereof in the same manner and to the same extent as to lands acquired by such Company and to the proprietors and occupiers thereof. C. S. C., c. 68, s 52.

52. And in case any such Company purchases or takes possession of such works as aforesaid, and does not make or construct any other works than those so acquired, it shall not be requisite for the Company to observe the formalities required by the eighth and ninth sections of this Act, excepting only that such Company shall furnish the Commissioner of Public Works with the report and copy of report in the said sections mentioned. C. S. C., c. 68, s. 53.

53. Nothing herein contained shall authorize any Company formed under this Act to take possession of or in anywise injure any mill site upon which there are existing any mills or machinery, or any hydraulic works other than those intended to facilitate the passage of timber; and no Company formed under this Act shall commence any work which interferes with or endangers any such occupied mill site, without the assent in writing of the proprietor thereof previously obtained, or an award of Arbitrators appointed as herein provided, to the effect that the proposed works will not injure such mill site, which assent or award shall be registered in the same manner as the instrument of incorporation of such Comp... C. S. C., c. 68, s. 54.

54. The provisions of the fifteenth and sixteenth ...s of *The Act respecting Mills and Mill Dams*, shall extend to similar ... overflowed by any of the works constructed by any Company formed under this Act. C. S. C., c. 68, s. 55.

55. Nothing herein contained shall authorise any Company formed under this Act to obstruct any waters already navigable, or to collect any tolls other than those upon timber. C. S. C., c. 68, s. 56.

56. If by reason of any dam erected by a Company formed under this Act, any fall or water power is created, the Company shall in nowise have any title or claim to the use of such water power; nevertheless, if the owner or occupier of the land adjoining has made a claim for compensation for damages arising from such dam, the Arbitrators may take into account the increased value of his property by reason of the water power so created. C. S. C., 68, s. 57.

57. The tolls for the first year shall be calculated upon the estimates hereinbefore required to be made of the cost of the works, and the quantity of different kinds of timber expected to pass down the stream, and the tolls in all future years shall be calculated upon the cost of the works and the quantity of different kinds of timber expected to pass down the stream, and the receipts and expenditure, according to the accounts of the then next preceding year, as rendered in accordance with the provisions of the twenty-seventh and following sections of this Act; and the tolls shall be so calculated that, after defraying the necessary cost of maintaining and superintending the works and collecting the tolls, the balance of the receipts may as nearly as possible be equal and in no case exceed ten dollars for every hundred expended and invested in the said works; and if in any year the receipts from tolls are such, that, after defraying all the current expenses, there remains a clear profit of more than ten dollars upon every hundred of the capital expended, there shall nevertheless be divided amongst the shareholders no greater dividend than after the rate of ten dollars for every hundred, and the remainder shall be carried over to the receipts of the following year. C. S. C., c. 68, s. 58.

58. The tolls to be collected upon different kinds of timber shall bear to each other the following proportions, viz.:

		$	cts.
Red and White Pine,	per piece	0	1⅔
Oak, Elm, and other hard wood	"	0	2½
Spars	"	0	5
Masts	"	0	8⅓
Saw Logs	"	0	5/30
Sawed Lumber per M. board measure		0	1⅔
Staves per M		0	25
Firewood, shingle bolts, and other timber per cord		0	3⅓

C. S. C., c. 68, s. 59.

59. The annual account required to be rendered by every Company shall contain a schedule of the tolls, calculated as aforesaid, which it is proposed to collect in the following year, and if it has not been notified to the President of the Company, on or before the fifteenth day of March in each year, that the schedule of tolls has been disallowed by an order of the Commissioner of Public Works, the President of the Company shall cause the said schedule of tolls to be published for the space of one month in some newspaper published within the County or Counties, District or Districts in which or nearest to which such works are situate, and such

tolls so published shall be the lawful tolls for that year; but if it appears to the Commissioner of Public Works that the proposed schedule of tolls has not been calculated according to the true intent and meaning of this Act, such Commissioner may, by an instrument under his hand, alter or vary the said schedule of tolls so as to make them correspond with the true meaning of this Act; and such amended schedule of tolls shall be notified to the President of the Company, and shall by him be published as aforesaid, and shall be the lawful tolls for that year. C. S. C., c. 68, s. 60.

60. Every such Company may demand from the owner of any timber intended to be passed through any portion for the works of the Company, or from the person in charge of the same, a written statement of the quantity of each kind of timber and of the destination of the same, and of the sections of the works through which it is intended to pass, and if no such written statement is given when required, or a false statement is given, the whole of such timber, or such part of it as has been omitted by a false statement, shall be liable to double toll. C. S. C., c. 68, s. 61.

61. Every such Company may demand and receive the lawful toll upon all timber which has come through or over any of the works of the Company; and the Company, by its servants, shall have free access to all such timber for the purpose of measuring or counting the same. C. S. C., c. 68, s. 62.

62. If the just tolls are not paid on demand, the Company may sue for the same in any Court of competent jurisdiction, and recover from the owner of the timber the amount of the tolls and the costs of suit. C. S. C., c. 68, s. 63.

63. If the owner of the timber objects to the amount of tolls demanded, and tenders a sum which he claims to be the true and just amount of the tolls, the Company shall pay the costs of the suit, unless the judgment obtained is for a greater amount than the sum so tendered. C. S. C., c. 68, s. 64.

64. If timber has not come through or over the whole of the works of the Company, but only through or over a part thereof, the owner of the timber shall only be liable to pay tolls for such sections of the whole works as he has made use of, if in the schedule of tolls the work is divided into sections, and if not, then to pay such a portion of the whole toll as the distance such timber has come through the works, bears to the whole distance over which such works extend. C. S. C., c. 68, s. 65.

65. If the true owner of any timber which has passed through any of the works of the Company cannot be ascertained, or if there are reasonable grounds to apprehend that the tolls thereon have not been paid by the owner or reputed owner or person in charge, any Mayor, Reeve or Justice of the Peace having jurisdiction within the locality through or adjoining which such navigation extends, or where the timber

may be found, if within twenty miles of any such works, shall, upon the oath of any Director or servant of the Company that the just tolls have not been paid, issue a warrant for the seizure of such timber, or so much thereof as will be sufficient to satisfy the tolls, which warrant shall be directed to any Constable or any person sworn in as a Special Constable for that purpose, at the discretion of the Magistrate, and shall authorize the person to whom it is directed, if the tolls are not paid within fourteen days from the date thereof, to sell the said timber, and out of the proceeds to pay to the Company the just tolls, together with the costs of the warrant and sale, rendering the surplus on demand to the owner. C. S. C., c. 68, s. 66.

OFFENCES AND PENALTIES.

Section 67 of C. S. C., c. 68, enacts as follows:

67. If any person wilfully and maliciously burns, breaks down, injures, cuts, removes or destroys, in whole or in part, any dam, pier, slide, boom or other work of any such Company, or any chain or other fastening attached thereto, or wilfully and maliciously impedes or blocks up any channel or passage intended for the transmission of timber, he shall be guilty of a misdemeanor, and on conviction thereof shall be punished by fine and imprisonment in the Common Gaol for any term not exceeding one year, at the discretion of the Court before whom the offender is convicted. 16 V., c. 191, s. 28.]

68. If any person resists or impedes any of the servants of any such Company in the transmission of any timber through any such works, or in carrying out any regulations of the Company for the greater safety and regularity of such transmission, or resists any such servants who may require access to any raft or other timber to ascertain the just tolls thereon, or in any way molests such Company or its servants in the exercise of any rights secured to them by this Act, such person shall, upon conviction thereof in a summary way before a Justice of the Peace having jurisdiction in the locality in or adjoining which the offence has been committed, be sentenced to pay a fine of not more than ten dollars nor less than one dollar, together with all costs, to be paid within a time to be limited by the said Justice, and in default to be levied as next hereinafter provided. C. S. C., c. 68, s. 68.

69. In any proceeding or prosecution before any Justice of the Peace under this Act, the Justice may summon the party complained against to appear at a time and place to be named in the summons, and if he does not appear accordingly, then upon proof of the due service of the summons upon such party, either personally or by leaving a copy thereof at his usual place of abode, or with any adult person belonging to the raft to which such party is attached, the Justice may either proceed to hear and determine the case *ex parte*, or issue his warrant for apprehending and

bringing such party before himself or some other Justice of the Peace, or the Justice may, without previous summons, issue such warrant, and the Justice before whom the parties appear or are brought shall proceed to hear and determine the case. C. S. C., c. 68, s. 69.

68. The fines and forfeitures authorized to be summarily imposed by this Act may be recovered upon information and complaint before any Justice of the Peace of the County within which the same have been incurred, and shall be levied and collected by distress and sale of the offender's goods and chattels, under the authority of a warrant of distress for that purpose, to be issued by the Justice before whom the conviction has been had. C. S. C., c. 68, s. 70.

69. In case there are no goods or chattels to satisfy such warrant, the offender shall be committed to the Common Gaol of the District or County for any period not exceeding one month. C. S. C., c. 68, s. 71.

[*The original section adds the following:*

But this section shall not prevent the issuing of a warrant of commitment in the first instance, upon a conviction for any offence mentioned in the sixty-seventh section of this Act.]

70. All fines and forfeitures collected under the authority of this Act shall be paid to the Treasurer of the Company owning the work in respect of which such fines and forfeitures have been imposed, for the use of the Company. C. S. C., c. 68, s. 72.

71. Any suit against any person for any matter or thing done in pursuance of this Act, shall be brought within six months next after the fact committed, and not afterwards; and the defendant therein may plead the general issue only, and give this Act and the special matter in evidence on the trial. C. S. C., c. 68, s. 74.

MISCELLANEOUS.

72. Every such Company shall, within two years from the day of their becoming incorporated, complete each and every work undertaken by them, and for the completion whereof they may be incorporated; in default whereof they shall forfeit all the corporate and other powers and authority which they have in the meantime acquired, and all their corporate powers shall thenceforth cease and determine; unless further time is granted by a by-law of the County or Counties, District or Districts in or adjoining which the work is situate; and if any Company formed under this Act, for the space of one year abandons any works completed by them so that the same are not in sufficient repair and cannot be used for the purpose proposed in the instrument of incorporation of the Company, then the corporate powers of the Company shall cease and determine. C. S. C., c. 68, s. 75.

73. After any works constructed by a Company under this Act have been completed and tolls established, the Company shall keep the same in good and sufficient repair; and if any such works have not been constructed according to the description given thereof in the report required by the ninth section of this Act, or have become insufficient or out of repair, any person interested in the navigation may serve upon any servant of the Company a notice of such insufficiency, and if within a reasonable time after the service of such notice the necessary repairs have not been completed, such Company shall be liable for the damage which any person may sustain from the continuance of such insufficiency; but no Company formed under this Act shall be held liable for any damage, so long as their works are in accordance with the description or specification thereof in the original instrument required to be registered, or in any description or specification subsequently approved of and registered, nor for any damage arising from the accidental destruction or injury of their works, but only for the damage which may arise from the wilful neglect of the Company after notice served upon one of its servants, as hereinbefore provided. C. S. C., c. 68, s. 76.

74. Any two Companies formed for the construction of works on any streams contiguous to each other, may unite and form one consolidated Company, on such terms as to them seem meet; and the name of such united Companies to be then assumed shall thenceforth be the corporate name thereof, and such united Companies may then exercise and enjoy all the rights, and shall be subject to all the liabilities of other Companies formed under the provisions of this Act, and which the separate Companies had and enjoyed or were subject or liable to before the union thereof. C. S. C., c. 68, s. 77.

75. Whenever it is found expedient for the public service, the Lieutenant-Governor in Council may declare any Company formed under this Act dissolved, and may declare all the works of any such Company, Provincial Works, upon payment to such Company of the then actual value of the works, to be decided by Arbitrators, one of whom shall be appointed by the Commissioner of Public Works, and one by the Company, and if they do not agree to an award, the Judge of the County Court for the County in or adjoining which the works are situate, shall be the third Arbitrator. C. S. C., c. 68, s. 79.

SCHEDULE.

(Section 5.)

INSTRUMENT OF INCORPORATION.

Be it remembered that on this day of , in the year of our Lord one thousand eight hundred and , we, the undersigned Shareholders, met at , in the County

of , in the Province of Ontario, and resolved to form ourselves into a Company, to be called (*here insert the corporate name intended to be taken by the Company*), according to the provisions of chapter 153 of "*The Revised Statutes of Ontario*," entitled "*An Act, &c.* (*insert the title of this Act*), for the purpose of constructing a slide, wharf, pier (*or other such works as aforesaid, describing the nature, extent and situation thereof*); And we do hereby declare that the Capital Stock of the said Company shall be dollars, to be divided into shares, at the price or sum of twenty dollars each, and we, the undersigned Shareholders, do hereby agree to take and accept the number of shares set by us opposite to our respective signatures, and we do hereby agree to pay the calls thereon, according to the provisions of the said in part recited Act and of the Rules, Regulations, Resolutions and By-laws of the said Company, to be made or passed in that behalf; and we do hereby nominate (*the names to be here inserted*) to be the first Directors of the said Company.

Names.	Number of Shares.	Amount.

CHAPTER 157.

AN ACT RESPECTING JOINT STOCK COMPANIES, FOR SUPPLYING CITIES, TOWNS AND VILLAGES WITH GAS AND WATER.

(Rev. Stats. Ont., Cap. 157.)

Interpretation, s. 1.
Formation of Companies, ss. 2-8.
By-laws, ss. 9-10.
Directors and Officers, ss. 11-20.
Special Meetings, s. 21.
Yearly Report, s. 22-23.
Liability of Directors and other Officers, ss. 24-31.
Directors to keep Books, ss. 32-37.
Shares and their transfer, ss. 38-41.
Increasing the capital stock, ss. 42-43.
Calls, ss. 44-49.
Municipalities taking stock, ss. 50-51.
Aliens may hold stock, s. 52.
Powers of Companies, ss. 53-59.
Powers to borrow, ss. 60-68.
Restrictions on power, ss. 69-70.
Prohibitions and Penalties, ss. 71-78.
Enforcement of Penalties, ss. 79-81.
Arbitrations, ss. 82-85.
Miscellaneous, ss. 86-88.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

INTERPRETATION.

1. The word "Company," wherever it occurs in this Act, shall be construed to mean a Joint Stock Company incorporated by registration under the provisions of this Act or of some former Act respecting Gas and Water Incorporated Joint Stock Companies. C. S. C., c. 65, s. 85.

FORMATION OF COMPANIES.

2. Any five or more persons who desire to form a Company for supplying any City, Town, incorporated Village, Township or other Municipality with Gas or Water, or with both Gas and Water, may make and sign a statement or declaration in writing, in which shall be set forth:

1. The corporate name of the Company;

2. The object for which the same is formed;

3. The amount of capital stock of the Company, which shall be divided into shares of twenty dollars each, and such stock, in the case of a Gas and Water Company in a City, shall not exceed three hundred thousand dollars, if Gas or Water only is to be supplied, and six hundred thousand

dollars if both Gas and Water are to be supplied; and in the case of a Town or Village, shall not exceed two hundred thousand dollars if Gas or Water only is to be supplied, and four hundred thousand dollars if both Gas and Water are to be supplied; and the money so raised shall be appropriated to the purpose of constructing, completing, acquiring and maintaining their said Gas Works or Water Works, or Gas and Water Works, and to no other object or purpose whatever;

4. The number of shares of which the stock is to consist;

5. The number and names of the Directors who are to manage the concerns of the Company for the first year;

6. The name of the Municipality in which the operations of the Company are intended to be carried on; and

7. The term of the Company's proposed existence, which shall not exceed fifty years. C. S. C., c. 65, s. 1; 23 V., c. 32, s. 1.

3. The persons making the statement or declaration shall acknowledge the same in duplicate before the Mayor or Chief Magistrate of the Municipality, and he shall receive the same, and grant a certificate thereof. C. S. C., c. 65, s. 2; 23 V., c. 32, s. 1.

4. If upon the petition of the persons desiring to form the Company the Municipal Council of the Municipality in which the operations of the Company are to be carried on, pass within thirty days from the date of such acknowledgment, a by-law granting authority to such persons as a Company to lay down pipes for the conveyance of Water or Gas, or both under the streets, squares and other public places of such Municipality, the Registrar of the County or other Registration Division in which the same is situate, on the production of one of the duplicates of such statement or declaration, with a proper certificate of the acknowledgment thereof endorsed thereon, and a duly certified copy of such by-law attached thereto, shall file the same and make an entry thereof in a book to be kept by him for that purpose; and the other of the duplicates, with a proper certificate, endorsed thereon of the acknowledgment thereof, and of the filing and registration thereof, and of such by-law, and with a certified copy of the by-law thereto annexed, shall forthwith be transmitted to and filed in the office of the Provincial Secretary. C. S. C., c. 65, s. 3; 23 V., c. 32, s. 1.

5. When the formalities required by the foregoing sections of this Act have been complied with, the persons who have signed the statement or declaration, and all persons who thereafter become shareholders of the Company thereby established, shall be a body corporate, by the style and title mentioned in such statement or declaration. C. S. C., 65, s. 4.

6. Compliance with the formalities prescribed in the foregoing sections of this Act for the formation of any Company, shall be conclusively estab-

lished by the insertion in the *Ontario Gazette* of a notice to that effect by the Provincial Secretary. C. S. C., c. 65, s. 5.

7. A copy of the whole of the registered statement or declaration registered in pursuance of this Act, and certified by the Registrar or his Deputy to be a true copy, shall be received in all Courts and places as *prima facie* evidence of the facts therein stated. C. S. C., 65, s. 6.

8. Any Company incorporated under this Act may, in their corporate name, purchase and hold, sell and convey lands, tenements and hereditaments for them and their assigns and successors for the use of the said Gas Works or Water Works, or Gas and Water Works, and such real estate holden by any such Company shall be held for the purposes for which the Company is incorporated in constructing their necessary works and for no other purpose, and shall not at any time exceed in value thirty thousand dollars. C. S. C., c. 65, s. 7.

BY-LAWS.

9. A majority of the shareholders of any such Company present at any special general meeting may make such by-laws as they deem proper for the following purposes:

1. For the management and disposition of the stock, business and affairs of the Company;

2. For the appointment of officers and prescribing their duties, and those of all artificers and servants that may be employed and for carrying on all kinds of business within the objects and purposes of the Company;

3. For appointing the number of Directors of the Company, who shall not exceed nine, nor be less than three, including the Head of any Municipality holding stock in the Company to the amount of ten thousand dollars or upwards, as prescribed by subsection twenty-four of the four hundred and sixty-first section of "*Municipal Act*;" and for determining the number of shares it shall be necessary for a shareholder to hold to qualify him to act as a Director.

4. For the payment of Directors, with the consent of a majority of the shareholders at the annual meeting, or for the appointment of one or more paid Directors.

5. For the amending, altering or repealing any by-law of the Company made under the authority of this or any other Statute. C. S. C., c. 65, s. 8.

10. A copy of any by-law of the Company, purporting to be under the hand of the Clerk, Secretary or other officer thereof, and having the cor-

porate seal of the Company affixed to it, shall be received as *prima facie* evidence of such by-law in all Courts of Law or Equity in this Province. C. S. C., 65, s. 9.

DIRECTORS AND OFFICERS.

11. The stock, property and concerns of every Company incorporated under this Act or any former Act for a like purpose, shall be managed by not less than three nor more than nine Directors, as provided in the by-laws, and such Directors shall respectively be shareholders in the Company, and a majority of the number of such Directors shall constitute a quorum for the transaction of business. C. S. C., c. 65, s. 10.

12. The Directors, except for the first year, shall be annually elected by the shareholders at a time and place which shall be directed by the by-laws of the Company. C. S. C., c. 65, s. 11.

13. Notice of the time and place of holding such election shall be published not less than ten days previous thereto in a newspaper printed in the Municipality where the operations of the Company are carried on, or if there be no newspaper so printed, then in a newspaper published in the County Town. C. S. C., c. 65., s. 12; 23 V., c. 32, s. 3; 40 V., c. 7, *Sched.* A (140).

14. The election shall be made by such of the shareholders as attend for that purpose either in person or by proxy. C. S. C., c. 65, s. 13.

15. All elections shall be by ballot, and each shareholder shall be entitled to as many votes as he owns shares of stock in the Company C. S. C., c. 65, s 14.

16. The persons receiving the greatest number of votes shall be Directors. C. S. C., c. 65, s. 15.

17. When any vacancy happens amongst the Directors by death, resignation or otherwise, it shall be filled for the remainder of the year in the manner provided by the by-laws of the Company. C. S. C., c. 65, s. 16.

18. If the election of Directors is not made on the day when according to the by-laws of the Company it ought to be made, the Company shall not for that reason be dissolved, but the shareholders may hold the election on any other day in the manner provided for by such by-laws, and all acts of Directors until their successors are elected shall be valid and binding as against the Company. C. S. C., c. 65, s. 17.

19. The Directors shall elect from among themselves a Chairman or President, and the Company shall also have such subordinate officers as the by-laws thereof require. C. S. C., c. 65, s. 18.

20. The subordinate officers shall be appointed by the Directors, and

be required to give such security for the faithful performance of the duties of their respective offices as may be provided by the by-laws of the Company. C. S. C., c. 65, s. 19.

SPECIAL MEETINGS.

21. The President or any three Directors of any such Company may call a special general meeting of the shareholders for any purpose, giving at least ten days' notice by advertisement in one or more newspapers published in the Municipality where the business of the Company is carried on, or by a circular mailed to the address of each shareholder, at least ten days previous to the time appointed for holding the meeting. C. S. C., c. 65, s. 20.

2. If there be no newspaper so published, the notice may be given in the same manner as under section thirteen of this Act, a notice of the time and place for holding elections may be given. 23 V., c. 32, s. 3; 40 V., c. 7, *Sched.* A. (140.)

ANNUAL REPORT.

22. Every Company incorporated under this Act shall, annually within twenty days from the first day of January, make a report which shall be inserted in some newspaper published in the Municipality where the business of the Company is carried on, stating the amount of capital stock of the Company, and the proportion thereof then actually paid in, together with the amount of the existing debts of the Company. C. S. C., c. 65, s. 21.

2. If there be no newspaper so published, the report shall, within the time aforesaid, be inserted in a newspaper published in the County Town. 23 V., c. 32, s. 3; 40 V., c. 7, *Sched.* A (141.)

23. Such report shall be signed by the Chairman or President, and a majority of the Directors, and shall be verified by the oath of the Chairman or President, or of the Secretary of the Company, and shall be entered and registered in the County or other Registry Office of the Registration Division in which the business of the Company is carried on. C. S. C., c. 65, s. 22.

INDIVIDUAL LIABILITY OF DIRECTORS AND OTHER OFFICERS.

24. The Directors of any Company failing to comply with the requirments of the two last preceding sections, shall be jointly and severally liable for all the debts of the Company then existing, and for all contracted until such report is made. C. S. C., c. 65, s. 23.

25. If the Directors of any Company declare and pay any dividend when the Company is insolvent, or any dividend the payment of which would render it insolvent, or which would diminish the amount of its capital stock, they shall be jointly and severally liable for all the debts of

the Company then existing, and for all thereafter contracted during their continuance in office respectively: but if any Director objects to the declaring or payment of such dividend, and, at any time before the time fixed for the payment thereof, files a written statement of such objection in the office of the Secretary of the Company, and also in the Registry Office of the County or other Registration Division, such Director shall be exempt from such liability. C. S. C., c. 65, s. 24.

26. No loan of money shall be made by any Company to any shareholder therein; and if any such loan be made to a shareholder, the officers who make or assent thereto shall be jointly and severally liable to the extent of such loan, with legal interest thereon for all the debts of the Company thereafter contracted until the repayment of the sum loaned. C. S. C., c. 65, s. 25.

27. If any certificate or report made, or public notice given by the officers of any Company, in pursuance of this Act, is false in any material representation, all the officers who signed the same shall be jointly and severally liable for all the debts of the Company contracted while they are officers or shareholders thereof respectively. C. S. C., c. 65, s. 26.

28. If the indebtedness of the Company at any time exceeds the amount of its capital stock, the Directors assenting thereto shall be personally and individually liable to the creditors of the Company for such excess. C. S. C., c. 65, s. 27.

29. No person holding stock in any Company as executor, administrator, tutor, curator, guardian or trustee, shall be personally subject to any liability as shareholder of such Company, but the estates and funds in the hands of such executor, administrator, tutor, curator, guardian or trustee, shall be liable in like manner and to the same extent as the testator or intestate, or the minor, ward or interdicted person, or the person interested in such trust fund would be if he were living and competent to act and held the same stock in his own name: and no person holding such stock as collateral security shall be personally subject to any liability as shareholder of such Company, but the person pledging such stock shall be considered as holding the same, and shall be liable as shareholder accordingly. C. S. C., c. 65, s. 28.

30. Every such executor, administrator, tutor, curator, guardian or trustee, shall represent the shares of stock in his hands at all meetings of the Company, and may vote accordingly as a shareholder; and every person who pledges his stock as aforesaid, may nevertheless represent the same at all such meetings, and may vote accordingly as a shareholder. C. S. C., c. 65, s. 29.

31. No person holding stock as executor, administrator, tutor, curator, guardian or trustee, shall be a Director or hold any office in the service of such Company; and all votes given to them or either of them shall be void. C. S. C., c. 65, s. 30.

STOCK BOOKS.

32. The Directors of every Company shall cause a book to be kept by the Treasurer or Clerk thereof, containing, in alphabetical order, the names of all persons who are or have been shareholders of the Company, and showing:

1. Their places of residence;

2. The number of shares of stock held by them respectively

3. The time when they respectively became the owners of the shares, and

4. A statement of all the existing debts and liabilities of the Company, and of the amount of its stock actually paid in. C. S. C., c. 65, s. 31.

33. Such books shall, during the usual business hours of the day, on every day except Sundays and holidays, be open for the inspection of shareholders and creditors of the Company, and their personal representatives, at the office or principal place of business of the Company where the operations of the Company are carried on. C. S. C., c. 65, s. 32.

34. Every shareholder, creditor or representative may make extracts from such book; and no transfer of stock shall be valid for any purpose whatever, except to render the person to whom it is transferred liable for the debts of the Company, until an entry thereof has been made as required by the thirty-second section of this Act, and showing to and from whom such stock has been transferred. C. S. C., c. 65, s. 33.

35. Such books shall be *prima facie* evidence of the facts therein stated in favour of the plaintiff in any suit or proceeding against the Company or against any one or more shareholders. C. S. C., c. 65, s. 34.

36. Every officer or agent of any Company who refuses or neglects to make any proper entry in such book, or to exhibit the same, or allow the same to be inspected and extracts to be taken therefrom, shall be liable to a fine of forty dollars, or more or less, at the discretion of the Directors C. S. C., c. 65, s. 35.

37. Every Company that neglects to keep such book open for inspection as aforesaid, shall forfeit the corporate rights, character and privileges acquired by it in pursuance of this Act. C. S. C., c. 65, s. 36.

SHARES AND THEIR TRANSFER.

38. The stock of every Company shall be deemed personal property, notwithstanding the conversion of the funds into real estate, and shall go to the personal representatives of the shareholders, and shall be assignable

and transferable in such manner as may be prescribed by the by-laws of the Company. C. S. C., c. 65, s. 37.

39. No shares shall be transferable until all previous calls thereon, and all debts due to the Company by the shareholder wishing to transfer his share, for gas, water rent, fixtures or otherwise, have been fully paid, or until the shares have been declared forfeited for the non-payment of calls thereon. C. S. C., c. 65, s. 38.

40. No transfer of shares shall be valid unless entered and registered in a book or books to be kept for that purpose in the manner provided by the by-laws of the Company. C. S. C., c. 65, s. 39.

41. No Company shall use any of its funds in the purchase of stock in any other corporation. C. S. C., c. 65, s. 40.

INCREASING THE CAPITAL STOCK.

42. Whenever a majority of the Directors of any Company are of opinion that the capital stock thereof is insufficient for the purposes for which the Company has been incorporated, they may call a general meeting of the shareholders of the Company (giving at least ten days notice of the time and place of meeting, either by advertisement in one or more of the newspapers published in the Municipality where the operations of the Company are carried on, (or if, there is no newspaper so published, then in the manner prescribed in section thirteen for giving notice of the time of holding a meeting for the election of Directors,) or by a circular addressed to each shareholder, and mailed at least ten days previous to the time appointed for holding such meeting), and a majority of the shareholders who attend and are present at such meeting may pass a by-law for increasing the capital stock of the Company to such amount as they deem necessary for carrying out the purposes of the Company, but not in the whole exceeding the amounts respectively hereinbefore mentioned; and for authorizing the raising of such additional capital by increasing the number of shares of twenty dollars each into which the capital of the Company is or may be divided, and for enabling the Directors to receive subscriptions for the whole or any part of such additional capital from any person or body corporate, or otherwise, under such regulations as may be made by the Directors in that behalf. C. S. C., c. 65, s. 41.; 23 V., c. 32, s. 3; 40 V., c. 7, *Sched.* A. (140).

43. The name of every subscriber for any new or additional stock so authorized to be subscribed for in any such Company, shall be forthwith entered as that of a shareholder in the register of shareholders of the Company, with the date of subscription and number of shares subscribed for; and thereupon such shareholder shall become liable to the Directors of every such Company for the payment of the full amount subscribed, in such instalments, and at such times as the said Directors may be authorized to call the same in, and such shareholder shall be subject to all the

conditions, restrictions and liabilities, and entitled to all the rights, privileges, benefits and advantages to which the original shareholders may thenceforth be subject or entitled. . . S. C., c. 65, s. 42.

CALLS.

44. Every shareholder shall be held liable to the Directors of the Company for the payment of the full amount subscribed, and the Directors may call in and demand from the shareholders thereof, respectively, all sums of money by them subscribed, at such times and in such payments or instalments as such Directors deem proper, provided that no one instalment shall exceed ten per cent., and that not less than one month shall intervene between the calls for any two instalments (save and except in the case of any original stock of any Company formed before the thirtieth day of May, in the year of our Lord one thousand eight hundred and fifty-five, in which latter case not less than three months shall intervene between such calls). C. S. C., c. 65, s. 43

45. If payment is not made by the shareholders respectively within sixty days after a personal demand, or after notice requiring such payment has been published for six successive weeks in a newspaper published in the Municipality where the business of the Company is carried on, or if there is no newspaper so published, then a newspaper published in the County Town, the Directors may declare forfeited the shares upon which the said instalments have not been paid; which forfeiture shall be a discharge to the holders of the shares so forfeited from all further liability either to the Company or to any third party in respect of the shares so forfeited; but the holders of shares so forfeited shall lose whatever sum or sums they have paid on or for such shares, and no more. C. S. C., c. 66, s. 44; 23 V., c. 32, s. 3; 40 V., c. 7, *Sched.* A. (142).

46. The Directors may sue any shareholder for the amount of the call or calls on his stock due and not paid, instead of forfeiting the same. C. S. C., c. 65, s. 45.

47. If at the time appointed for the payment of any call, any shareholder fails to pay the amount of the call payable by him, he shall be liable to pay interest, at the legal rate for the time being, for the same from the day appointed for payment thereof to the time of the actual payment, and may be sued by the Directors for such call and interest in any Court of Law or Equity of competent jurisdiction. C. S. C., c. 65, s. 46.

48. In a suit or action to recover any money due upon any share, it shall not be necessary to set forth the special matter, but it shall be sufficient to declare that the defendant is the holder of one share or more, stating the number of shares, and is indebted in the sum of money to which the calls in arrear amount, whereby an action has accrued to the Company by virtue of this Act. C. S. C., c. 65, s. 47.

49. At the trial of such action it shall be sufficient to prove the facts so declared, and the evidence of one witness in respect of all facts required to be proved shall be *prima facie* sufficient without the production of any documentary proof whatever. C. S. C., c. 65, s. 48.

MUNICIPALITIES TAKING STOCK.

50. Any of the Municipalities in which the works of any such Company are erected or placed may subscribe to or take stock in the Company, or may loan any sum of money, on mortgage or otherwise, to the Company, or contribute in any manner towards advancing the object for which the Company has been incorporated. C. S. C., c. 65, s. 50.

51. The Head for the time being of any Municipality holding stock in any such Company to the extent of one-tenth part or more of the whole of the capital stock thereof, shall be *ex officio* a Director of the Company so long as such Municipality continues to hold stock to the extent aforesaid. C. S. C., c. 65, s. 51.

ALIENS.

52. Aliens may hold stock in any such Company, and enjoy all the privileges in the Company which they would have if they were subjects of Her Majesty. C. S. C., c. 65, s. 52.

POWERS OF COMPANIES.

53. Every Company may sell and dispose of gas meters, and gas and water fittings of every description for the use of private and public houses, or for any establishment, company or corporation whatsoever, as well as coke, coal tar, and all and every the products of their works, refuse or residuum arising or to be obtained from the materials used in or necessary for the manufacture of Gas; and every Company may let out to hire gas meters, and gas and water fittings of every kind and description, at such rate and rents as may be agreed upon between the consumers or tenants and such Company. C. S. C., c. 65, s. 49.

54. Any such Company may break up, dig and trench so much and so many of the streets, squares, highways, lanes and public places of the Municipalities for supplying which with Gas or Water, or both, the Company has been incorporated, as are necessary for laying the mains and pipes to conduct the Gas or Water, or both, from the works of the Company to the consumers thereof, doing no unnecessary damage in the premises and taking care as far as may be to preserve a free and uninterrupted passage through the said streets, squares, highways, lanes and public places, while the works are in progress. C. S. C., c. 65, s. 53.

55. When any such Company has laid down main pipes for the supply of Gas or Water in or through any of the streets, squares or public places

of any Municipality, no other person or persons, bodies politic or corporate, shall, without the consent of such Company first had and obtained, nor otherwise than upon payment to such Company of such compensation as may is agreed upon, lay down any main pipe for the supply of Gas or Water within six feet of such Company's main pipes, or if it be impracticable to cut drains for such other main pipes at a greater distance, then as nearly six feet as the circumstances of the case will admit. C. S. C. c. 65, s. 54.

56. When there are buildings within the Municipality the different parts whereof belong to different proprietors, or are in possession of different tenants or lessees, the Company may carry pipes to any part of any building so situate, passing over the property of one or more proprietors or in possession of one or more tenants to convey the Gas or Water, or both, to the property of another or in possession of another, and such pipes shall be carried up and attached to the outside of the building. C. S. C. c. 65, s. 55.

57. The Company may also break up and uplift all passages common to neighbouring proprietors or tenants, and dig or cut trenches therein for the purpose of laying down pipes or taking up or repairing the same, doing as little damage as may be in the execution of the powers granted by this Act. C. S. C., c. 65, s. 56.

58. Every Company shall make satisfaction to the owners or proprietors of buildings or other property, or to the public, for all damages by them sustained in or by the execution of all or any of the said powers, subject to which provisions this Act shall be sufficient to indemnify every such Company and their servants, and those by them employed, for what they or any of them do in pursuance of the powers hereby granted. C. S. C., c. 65, s. 57.

59. Every such Company shall construct and locate their Gas Works and Water Works, and all apparatus and appurtenances thereunto belonging or appertaining, or therewith connected, and wheresoever situated, so as not to endanger the public health or safety. C. S. C., c. 65, s. 58.

COMPANIES BORROWING MONEY.

60. Any Company may, either in this Province or out of it, borrow money at any rate of interest, (in conformity with the laws of Canada) that the President and Directors of the Company deem necessary. C. S. C. c. 65, s. 67.

61. The sum so borrowed shall not exceed the sum of forty thousand dollars, to be expended in Gas Works, and the like sum for Water Works for any Town or incorporated Village, or the sum of one hundred thousand dollars for any City for either Gas or Water Works. C. S. C., c. 65, s. 68.

62. For securing the repayment of money so borrowed, with interest thereon, the Company or the President thereof, by and with the consent of a majority of the Directors, may mortgage, secure and assign the real estate, works, rates, revenues, rents and future calls on shareholders of the Company. C. S. C., c. 65, s. 69

63. All bonds, debentures or other securities granted for the purpose aforesaid may be made payable to bearer or transferable by endorsement or otherwise, as the Directors see fit; but no such bond or debenture shall be made or granted for a less sum than two hundred dollars. C. S. C. c. 65, s. 70

64. The bonds, debentures, future calls or other securities so granted and pledged as securities for money borrowed, shall be equitably and proportionably liquidated or paid out of the funds or receipts of the Company, without preference to any of such securities over each other. C. S. C., c. 65, s. 71

65. No such bonds or debentures or other securities so pledged shall prevent the Directors of the Company from receiving and applying such future calls to the purposes of the Company, so long as the money due on all such bonds and debentures does not exceed the amount of all the calls still remaining unpaid. C. S. C., c. 65, s. 72.

66. The Directors of any such Company, by a resolution entered upon the books of such Company, and without the formality of passing a by-law may from time to time as they see fit, authorize the President or Manager of the Company to sign such particular bonds, mortgages, contracts or instruments as it may, in the opinion of the Directors, be necessary or expedient so to sign, and to affix the common seal of the Company thereto C. S. C., c. 65, s. 73.

67. The President or the Manager of the Company, from time to time authorized as aforesaid, may draw, sign or accept such promissory notes or bills of exchange for the purposes of the Company, without seal, as in the opinion of the Directors it may be necessary or expedient so to sign or accept. C. S. C., c. 65, s. 74

68. All such bonds, contracts, mortgages and instruments so signed and sealed by the person authorized as aforesaid, and also such notes and bills so signed, drawn or accepted by the person authorized as aforesaid shall be valid and binding on the Company, and be held to be the act and deed of the Company; but such bonds, bills or debentures and securities as aforesaid shall not exceed the amount which the Company is by this Act empowered to borrow. C. S. C., c. 65, s. 75.

RESTRICTIONS.

69 Nothing contained in this Act shall authorize any such Company, or any person acting under the authority of the same, to take, use or

injure for the purposes of the Company, any house or other building, or any land used or set apart as a garden, orchard, yard, park, paddock, plantation, planted walk or avenue to a house, or nursery ground for trees, or to convey from the premises of any person any water already appropriated and necessary for his domestic uses, without the consent, in writing, of the owner or owners thereof first had and obtained. C. S. C., c. 65, s. 84.

70. Nothing in this Act shall authorize any Company established under it to interfere with or infringe upon any exclusive privilege granted to any other Company. C. S. C., c. 65, s. 86.

PROHIBITIONS AND PENALTIES.

71. If any person lays or causes to be laid any pipe or main, to communicate with any pipe or main belonging to any such Company, or in any way obtains or uses its Gas or Water without the consent of the Company, he shall forfeit and pay to the Company the sum of one hundred and twenty dollars, and also a further sum of four dollars for each day during which such communication remains, which sums, together with costs of suit in that behalf incurred, may be recovered by civil action in any Court of Law in this Province having the jurisdiction to the amount claimed. C. S. C., c. 65, s. 59.

72. If any person

1. Wilfully or maliciously breaks up, pulls down, or damages, injures, puts out of order or destroys, any main pipe, engine, water-house pipe, plug or other works, or apparatus, appurtenances or dependencies thereof or any matter or thing made and provided for the purpose aforesaid, or any of the materials used and provided for the same, or ordered to be erected, laid down or belonging to any such Company; or

2. In anywise wilfully does any other injury or damage, for the purpose of obstructing, hindering or embarrassing the construction, completion, maintaining or repairing of the said works, or causes or procures the same to be done; or

3. Bathes, or washes, or cleans any cloth, wool, leather, skin, animals, or any nauseous or offensive thing, or casts, throws or puts any filth, dirt or any nauseous thing, or causes, permits or suffers the water of any sink sewer or drain to run or be conveyed into, or causes any other annoyance to be done to the water within any reservoir, cistern, pond, source or fountain from which the water belonging to the Company is to be supplied or conveyed; or

4. Increases the supply of Gas or Water agreed for with the Company, by increasing the number or size of the holes in the gas burners, or using the gas without burners, or otherwise wrongfully, negligently or wastefully

burning the same, or by wrongfully or improperly burning the same, or by wrongfully or improperly wasting the Water or Gas;

such person shall, on conviction thereof, before a Justice of the Peace or any other person authorized to act in that capacity in the locality wherein the offence has been committed, be compelled to pay for the use of the Company a penalty not exceeding twenty dollars, together with costs of prosecution, or be confined in the common gaol of such County for a space of time not exceeding three months, as to such Justice seems meet. C. S. C., c. 65, s. 60.

73. Nothing in this Act contained shall prevent any person from constructing any works for the supply of Gas or Water to his own premises. C. S. C., c. 65, s. 61.

74. Neither the service nor connecting pipes of such Company, nor any meters, lustres, lamps, pipes, gas fittings or any other property of any kind whatsoever of the Company, shall be subject to or liable for rent, nor liable to be seized or attached in any way by the possessor or owner of the premises wherein the same may be, nor be in any way whatsoever liable to any person for the debt of any person to and for whose use or the use of whose house or building the same may be supplied by such Company, notwithstanding the actual or apparent possession thereof by such person. C. S. C., c. 65, s. 62.

75. If any person wilfully or maliciously damages or causes or knowingly suffers to be damaged any meter, lamp, lustre, service pipe, or fittings belonging to any such Company, or wilfully impairs or knowingly suffers the same to be altered or impaired, so that the meter or meters indicate less gas than actually passes through the same, such person shall incur a penalty to the use of the Company, for every such offence, of a sum not less than four dollars nor exceeding twenty dollars, and shall also pay all charges necessary for the repairing or replacing the said meter, pipes or fittings, and double the value of the surplus gas so consumed; such damages, penalties and charges to be recovered with costs as hereinafter provided. C. S. C., c. 65, s. 64.

76. If any person wilfully extinguishes any of the public lamps or lights, or wilfully removes, destroys, damages, fraudulently alters or in any way injures any pipe, pedestal, post, plug, lamp or other apparatus or thing belonging to the Company, he shall forfeit and pay to the use of the Company a penalty not less than four dollars nor more than twenty dollars, and shall also be liable to make good all damages and charges, to be recovered with costs as hereinafter provided. C. S. C., c. 65, s. 64.

77. If any person supplied by the Company with Gas or Water, or both, neglects to pay the rent, rate or charge due to the Company at any of the times fixed for the payment thereof, the Company, or any person acting under their authority, on giving forty-eight hours previous notice

may stop the supply of Gas or Water, or both, from entering the premises of the person in arrear as aforesaid, by cutting off the service pipe or pipes, or by such other means as the Company or its officers see fit, and may recover the rent or charge due up to such time, together with the expenses of cutting off the Gas or Water or both, as the case may be, in any competent Court, notwithstanding any contract to furnish for a longer time. C. S. C., c. 65, s. 65.

78. In all cases where the Company may lawfully cut off and take away the supply of Gas or Water, or both, from any house, building, or premises, the Company, their agents and workmen, upon giving forty-eight hours previous notice to the person in charge or the occupier, may enter into the house, building or premises between the hours of nine o'clock in the forenoon and four in the afternoon, making as little disturbance and inconvenience as possible, and may remove and take away any pipe, meter, cock, branch, lamp, fittings or apparatus, the property of and belonging to the Company, and any servant of the Company duly authorized may, between the hours aforesaid, enter any house into which Gas or Water or both have been taken, for the purpose of repairing and making good any such house, building or premises, or for the purpose of examining any meter, pipe, or apparatus belonging to the Company or used for their Gas or Water or both, and if any person refuses to permit or does not permit the servants and officers of the Company to enter and perform the acts aforesaid, the person so refusing or obstructing shall incur a penalty to the Company of forty dollars, and a further penalty of four dollars for every day during which such refusal or obstruction continues, to be recovered with costs as hereinafter provided. C. S. C., c. 65, s. 66.

ENFORCEMENT OF PENALTIES.

79. All fines, penalties and forfeitures imposed by this Act may be sued for and recovered with costs by any such Company or by any person whose property is injured, to and for the use of such Company or person, either in the manner hereinbefore directed, or before a Justice or Justices of the Peace or any other person authorized to act in that capacity, where the offence has been committed, on the oath of any one credible witness. C. S. C., c. 65, s. 76.

80. All actions for damages or penalties or both given by this Act, shall be brought in Courts having jurisdiction to the amount involved in such suit, unless otherwise specially provided and authorized by this Act. C. S. C., c. 65, s. 77.

81. Where damages as well as a penalty may be given, such damages and penalty may be sued for separately, and such fines, penalties and damages may be levied by distress from the goods of the defendant, and in case the defendant has no goods to satisfy the same, he shall be committed to the common gaol for such period not exceeding two months as the Justice or Court may direct. C. S. C., c. 65, s. 78.

ARBITRATIONS.

82. If it be found necessary or deemed proper to conduct any of the pipes or to carry any of the works of the Company through the lands of any person, lying within ten miles of the Municipality for supplying which the Company is incorporated, and the consent of such person cannot be obtained for that purpose, the Company may nominate and appoint one indifferent person, and the owner or owners of the land taken or damaged may nominate and appoint another indifferent person, which two persons so appointed shall nominate and appoint a third person, and the said three persons shall act as Arbitrators in such matter of dispute between the Company and the owner or owners of the property. C. S. C., c. 65, s. 80.

83. The said Arbitrators shall examine all witnesses and administer all necessary oaths or declarations to them, and the said Arbitrators, or a majority of them, shall award, determine and adjudge what sum or sums of money respectively shall be paid to the owner or owners of the property so taken or damaged by the Company. C. S. C., c. 65, s. 81.

84. The sum or sums of money so awarded shall be paid within three months after the date of the award, and in default of such payment, the proprietor may resume the possession of his property, with all the rights appertaining thereto. C. S. C., 65, s. 82.

85. In the event of either the Company or the owner of such property failing to appoint an Arbitrator, after eight days notice from one of the said parties to the other, or of the said two Arbitrators failing to appoint a third, the Judge of the County Court of the County within which the said property lies may appoint a third Arbitrator, and the decision of the said three Arbitrators, or a majority of them, shall be binding on all parties concerned. C. S. C., c. 65, s. 83

MISCELLANEOUS.

86. In all proceedings which may have been had or taken under the Act passed in the sixteenth year of Her Majesty's reign, to provide for the formation of Incorporated Joint Stock Companies for supplying Cities, Towns and Villages with Gas and Water, or in or about any Company incorporated thereunder, the word "Trustees," wherever the same occurs, shall be taken to be and construed to mean the Directors. C. S. C., c. 65, s. 87.

87. Every Company formed or in the course of being formed under any former general Act respecting Joint Stock Companies for the purposes mentioned in this Act, when this Act takes effect, shall continue, or the formation thereof be completed under and subject to the provisions of this Act in like manner as if such Companies had originally been formed under this Act. C. S. C., c. 65, s. 88.

88. No amendment or repeal of this Act, nor the consequent dissolution of any corporation created under this Act, shall take away or impair any remedy given against any such corporation, its shareholders or officers, for any liability which had been previously incurred. C. S. C., c 65, s. 89.

CHAPTER 172.

AN ACT RESPECTING THE CHANGING OF THE NAMES OF INCORPORATED COMPANIES.

(Rev. Stats. Ont., Cap. 172.)

Change of name on application to the Lieutenant-Governor, ss. 1-5. *Change of name not to affect liabilities of the Company*, s. 6.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. Where any incorporated company within the legislative authority of the Legislature of the Province, whether incorporated under a special or general Act, is desirous of changing its name, the Lieutenant-Governor upon being satisfied that the Company is in a solvent condition, that the change desired is not for any improper purpose, and is not otherwise objectionable, and that the notice hereinafter provided for has been duly given, may, by Order in Council, change the name of the Company to some other name set forth in the said Order. 40 V., c. 8, s. 66 (1).

2. The Company shall give at least four weeks' previous notice in the *Ontario Gazette* and in some other newspaper published in the locality in which the operations of the Company are carried on, of the intention to apply for the change of name, and shall state the name proposed to be adopted. 40 V., c. 8, s. 66 (4).

3. In case the proposed new name is considered objectionable, the Lieutenant-Governor in Council may, if he thinks fit, change the name of the Company to some other unobjectionable name without requiring any further notice to be given. 40 V., c. 8, s 66 (4).

4. Such change shall be conclusively established by the insertion in the *Ontario Gazette* of a notice thereof by the Provincial Secretary. 40 V., c. 8, s. 66 (3).

5. Any affidavit or affirmation proposed to be submitted for the purposes of this Act, may be sworn or made before any Commissioner for taking affidavits in any of the Superior Courts. 40 V., c. 8, s. 66 (2).

6. No contract or engagement entered into by or with the Company, and no liability incurred by it shall be affected by the change of name; and all suits commenced by or against the Company prior to the change of name may be proceeded with against or by the Company under its former name. 40 V., c. 8, s. 69.

CHAPTER 8.

AN ACT TO PROVIDE FOR CERTAIN AMENDMENTS OF THE LAW.

(40 Vic., Cap. 8, Secs. 62—67 both inclusive.)

[*Assented to 2nd March*, 1877.]

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Joint Stock Companies by Letters Patent.

62. The seventh section of "The Ontario Joint Stock Companies Letters Patent Act, 1874," is hereby repealed, and the following substituted therefor:—(7.) The Letters Patent shall recite such of the material averments of the notice and petition so established, as the Lieutenant-Governor may find convenient to insert therein; and the Lieutenant-Governor may, if he thinks fit, give to the Company, a corporate name different from the name proposed by the applicants in the published notice; and the objects of the Company as stated in the Letters Patent may vary from the objects stated in the said notice, provided the objects of the Company as stated in the Letters Patent, shall be of a similar character to those contained in the notice published as aforesaid

63. Section ten of "The Ontario Joint Stock Companies' Letters Patent Act, 1874," is hereby amended by striking out the words "any real estate requisite for the carrying on of the undertaking of such Company, and substituting therefor "real estate subject to any restrictions or conditions in the Letters Patent set forth."

64. Where a notice has been published according to the rules of the Legislative Assembly for an Act incorporating any Company, the incorporation whereof is sought for objects for which incorporation is authorized by the "Ontario Joint Stock Companies' Letters Patent Act, 1874," and a Bill has been introduced into the said Assembly in accordance with such notice, and is subsequently thrown out or withdrawn, then in case a petition to the Lieutenant-Governor for the incorporation under such Act of such Company is filed with the Provincial Secretary within one month from the day of the termination of the Session of the Assembly for which the said notice was given, such notice may be accepted in lieu of the notice required by the fourth section of the said Act.

65. The Lieutenant-Governor may dispense with the publication of the notice mentioned in section four of said Act in any case in which the capital of the proposed Company is three thousand dollars or under, and in such case the petition to the Lieutenant-Governor shall state the particulars mentioned in section four in addition to the particulars mentioned in section five.

Change of Name of Companies.

66. Where any incorporated Company within the legislative authority of the Legislature of this Province, whether incorporated under a special or general Act, is desirous of changing its name, the Lieutenant-Governor upon being satisfied that the Company is in a solvent condition, that the change desired is not for any improper purpose, and is not otherwise objectionable, and that the notice hereinafter provided for has been duly given, may, by Order in Council, change the name of the Company to some other name set forth in the said Order.

(2.) Any affidavit or affirmation proposed to be submitted for the purposes of this section may be sworn or made before any Commissioner for taking affidavits in any of the Superior Courts.

(3.) Such change shall be conclusively established by the insertion in the *Ontario Gazette* of a notice thereof by the Provincial Secretary.

(4.) The Company shall give at least four weeks' previous notice in the *Ontario Gazette* and in some other newspaper published in the locality in which the operations of the Company are carried on, of the intention to apply for the change of name, and shall state the name proposed to be adopted; and in case the proposed name is considered objectionable, the Lieutenant-Governor in Council may if he thinks fit, change the name of the Company to some other unobjectionable name without requiring any further notice to be given.

67. No contract or engagement entered into by or with the Company, and no liability incurred by it shall be affected by the change of name; and all suits commenced by or against the Company prior to the change of name may be proceeded with against or by the Company under its former name.

CHAPTER 5.

AN ACT RESPECTING THE WINDING UP OF JOINT STOCK COMPANIES.

(41 Vic., cap. 5.)

[*Assented to 7th March*, 1878.]

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. This Act may be cited as "The Joint Stock Companies' Winding-up Act."

2. This Act shall apply to all incorporated companies or associations incorporated by the Legislature of the Province of Ontario, or under the authority of any Act of this Province, and to all companies and associations which were incorporated by the Parliament of the Province of Upper Canada, or of the Province of Canada, or under the authority of any Act of the Province of Canada, whose incorporation and the affairs thereof, in the particulars hereinafter mentioned, are subject to the legislative authority of this Province.

INTERPRETATION.

3. Unless otherwise expressed, or otherwise indicated by the context, the word "Court," as used in this Act, means any county court; and any Judge of a county court may either in term time or vacation exercise all the powers conferred by this Act upon the court;

2. The term "contributory" means every person liable to contribute to the assets of a company under this Act, in the event of the same being wound up; it shall, also, in all proceedings prior to the final determination of such persons, include any person alleged to be a contributory;

3. If any contributory dies either before or after he has been placed on the list of contributories hereinafter mentioned, his personal representatives, heirs and devisees shall be liable in due course of administration to contribute to the assets of the company in discharge of the liability of such deceased contributory, and such personal representatives, heirs and devisees shall be deemed to be contributories accordingly;

4. The expression "extraordinary resolution" in this Act means a resolution passed by a majority of not less than three fourths of such members of the company, for the time being entitled to vote, as may be present in person, or by proxy (in cases where, by the Act or charter or instrument of incorporation or the regulations of the company proxies are allowed), at any general meeting of which notice specifying the intention to propose such resolution has been duly given;

5. The expression "special resolution" in this Act means a resolution passed in the manner necessary for an extraordinary resolution, where the resolution, after having been so passed as aforesaid has been confirmed by a majority of such members (entitled according to the Act, charter or instrument of incorporation or the regulations of the company to vote) as may be present in person or by proxy, at a subsequent general meeting, of which notice has been duly given, and held at an interval of not less than fourteen days or more than one month from the date of the meeting at which the resolution was first passed.

WHEN COMPANIES MAY BE WOUND UP.

4. A company may be wound up under the Act:

1. Where the period, if any, fixed for the duration of the company by the Act, charter or instrument of incorporation has expired; or where the event (if any) has occurred, upon the occurrence of which it is provided by the Act or charter or instrument of incorporation that the company is to be dissolved; and the company in general meeting has passed a resolution requiring the company to be wound up;

2. Where the company has passed a special resolution (as hereinbefore defined) requiring the company to be wound up;

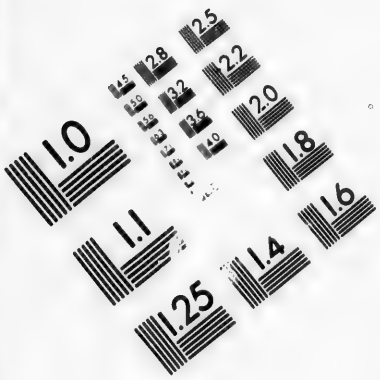
3. Where the company (though it may be solvent as respects creditors) has passed an extraordinary resolution (as hereinbefore defined) to the effect that it has been proved to their satisfaction that the company cannot by reason of its liabilities continue its business, and that it is advisable to wind up the same.

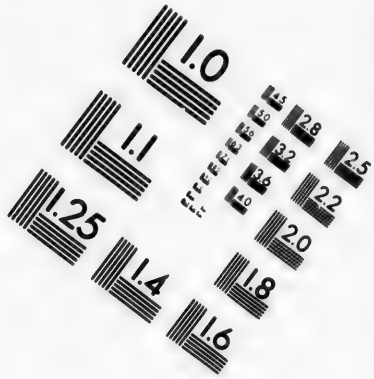
5. Where no such resolution has been passed as mentioned in the preceding section, the court may, on the application of a contributory, make an order for winding up, in case the court is of opinion that it is just and equitable that the company should be wound up.

6. A winding up shall be deemed to commence at the time of the passing of the resolution authorizing the winding up, or of making the order directing the winding up.

REGISTRATION.

7. A copy of the resolution or order for winding up, certified by the liquidator, may be registered in the registry office of any county, riding or





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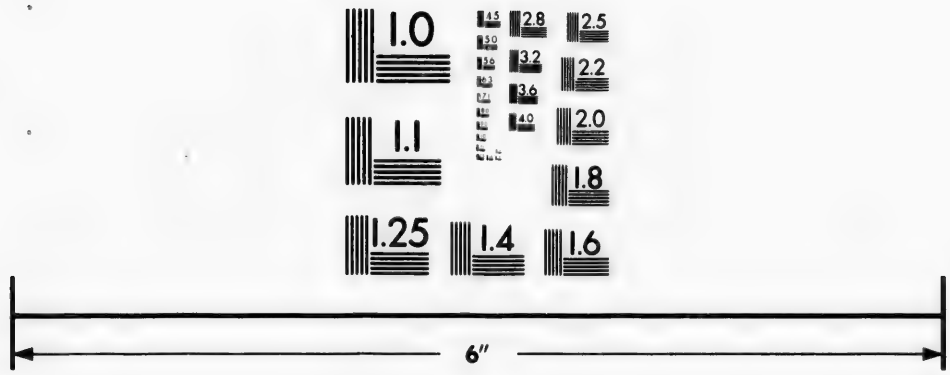

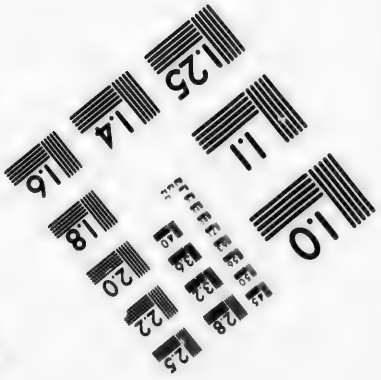

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registration division wherein the company may have any real estate; such resolution or order shall be accompanied by a description of the real estate belonging to the company in the County, and certified by the liquidator to be a correct description; and the Registrar shall register the said order and description upon payment to him of a fee of one dollar.

CONSEQUENCES OF COMMENCING TO WIND UP.

8. The following consequences shall ensue upon the commencement of the winding up of a company under the authority of this Act:

(1). The company shall from the date of the commencement of such winding up, cease to carry on its business, except in so far as may be required for the beneficial winding up thereof; and any transfers of shares, except transfers made to or with the sanction of the liquidators, or any alteration in the status of the members of the company, after the commencement of such winding up, shall be void, but the corporate state and all the corporate powers of the company shall, notwithstanding it may be otherwise provided by the Act, charter or instrument of incorporation, continue until the affairs of the company are wound up.

(2). The property of the company shall be applied in satisfaction of its liabilities; and subject thereto, and to the charges incurred in winding up its affairs, shall, (unless it is otherwise provided by the Act, charter, or instrument of incorporation) be distributed amongst the members according to their right and interests in the company.

(3). Liquidators shall be appointed for the purpose of winding up the affairs of the company and distributing the property.

(4). The company, in general meeting shall appoint such persons or person as the company thinks fit to be liquidators or a liquidator, and may fix the remuneration to be paid to them or to him, and they shall give such security as the contributories or the court may determine.

(5). If one person only is appointed, all the provisions herein contained in reference to several liquidators shall apply to him.

(6). Upon the appointment of liquidators, all the powers of the directors shall cease, except in so far as the company in general meeting, or the liquidators, may sanction the continuance of such powers.

(7). Where several liquidators are appointed, every power hereby given may be exercised by such one or more of them as may be determined at the time of the appointment, or at a subsequent meeting, or, in default of such determination, by any number not less than two.

(8). The contributories may at any meeting appoint one or more Inspector or Inspectors, to superintend and direct the proceedings of the Liquidator in the management and winding up of the estate; and in case of

an Inspector being appointed, all the powers of the Liquidator shall be exercised subject to the advice and direction of the Inspectors; and the contributories may also at any subsequent meeting held for that purpose, revoke any such appointment: and upon such revocation, or in the case of death, resignation or absence from the Province of an Inspector, may appoint another in his stead; and such Inspector may be paid such remuneration as the contributories may determine; and where anything is allowed or directed to be done by the Inspectors, it may or shall be done by the sole Inspector, if only one has been appointed.

(g). The contributories may, at any meeting, pass any resolution or order, directing the liquidator how to dispose of the property, real or personal, of the Company; and, in default of their doing so, the liquidator shall be subject to the directions, orders and instructions which he from time to time, receives from the inspectors, if any, with regard to the mode, terms and conditions on which he may dispose of the whole or any part of the property of the company.

GENERAL POWERS OF LIQUIDATORS.

9. The liquidator may be described in all proceedings by the style of "A. B., the liquidator of" (the particular company in respect of which he is appointed), and shall have power to do the following things:

1. To bring or defend any action, suit or other legal proceeding in the name, and on behalf of, the company;

2. To carry on the business of the Company so far as may be necessary for the beneficial winding up of the same;

3. To sell the real and personal property of the company by public auction or private contract, according to the ordinary mode in which such sales are made, with power to transfer the whole property to any person or company, or to sell the same in parcels, and on such terms as shall seem most advantageous; but no sale of the assets *en bloc* shall be made without the previous sanction of the contributories given at a meeting called for that purpose;

4. And in case, after having acted with due diligence in the collection of the debts, the liquidator finds that there remain debts due, the attempt to collect which would be more onerous than beneficial to the estate, he shall report the same to the Contributories, or Inspectors (if any); and with their sanction, he may sell the same by public auction, after such advertisement thereof as they may order; and pending such advertisements, the liquidator shall keep a list of the debts to be sold, open to inspection at his office, and shall also give free access to all documents and vouchers explanatory of such debts; but all debts amounting to more than one hundred dollars shall be sold separately, except as herein otherwise provided;

5. To draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the company; and to raise upon the security of the assets of the company, from time to time, any requisite sum or sums of money; and the drawing, accepting, making or endorsing of any such bill of exchange or promissory note as aforesaid, on behalf of the company, shall have the same effect, with respect to the liability of the company, as if such bill or note had been drawn, accepted, made or endorsed by or on behalf of such company in the course of carrying on the business thereof;

6. To take out if necessary, in his official name, letters of administration to any deceased contributory; and to do in his official name any other act which may be necessary for obtaining payment of any money due from a contributory or from his estate, and which act cannot be conveniently done in the name of the company; and in all cases where he takes out letters of administration, or otherwise uses his official name, for obtaining payment of any money due from a contributory, such money shall, for the purpose of enabling him to take out such letters or recover such money, be deemed to be due to the liquidator himself;

7. To execute in the name of the company all deeds, receipts and other documents;

8. And to do and exercise all other acts and things that may be necessary for the winding up of the affairs of the company and the distribution of its assets; and for such purposes to use when necessary, the Company's seal.

10. The liquidator may fix a certain day or certain days on or within which creditors of the company and others having claims thereon, are to send in their claims.

2. Where a liquidator has given such or the like notices of the said day as would be given by the Court of Chancery in an administration suit for creditors and others to send in to an executor or administrator their claims against the estate of a testator or intestate, the liquidator shall, at the expiration of the time named in the said notices, or the last of the said notices for sending in such claims, be at liberty to distribute the assets of the company, or any part thereof, amongst the parties entitled thereto, having regard to the claims of which the liquidator has then notice; and the liquidator shall not be liable for the assets or any part thereof so distributed to any person of whose claim such liquidator had not notice at the time of distributing the said assets or a part thereof, as the case may be; but nothing in the present Act contained, shall prejudice the right of any creditor or claimant to follow assets into the hands of the person who may have received the same.

11. The liquidators may, with the sanction of an extraordinary resolution of the company, make such compromise or other arrangement as the

liquidators deem expedient, with any creditors, or persons claiming to be creditors, or persons having or alleging to have any claim, present or future, certain or contingent, ascertained or sounding only in damages, against the company, or whereby the company may be rendered liable.

12. The liquidators may, with the sanction of an extraordinary resolution of the company, compromise all calls and liabilities to calls, debts, and liabilities capable of resulting in debts, and all claims, whether present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the company and any contributory or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets of the company or the winding up of the company, upon the receipt of such sums, payable at such times, and generally upon such terms, as may be agreed upon; with power for the liquidators to take any security for the discharge of such debts or liabilities, and to give a complete discharge in respect of all or any such calls, debts or liabilities.

13. Where any company is proposed to be or is in the course of being wound up, and the whole or a portion of its business or property is proposed to be transferred or sold to another company, the liquidators of the first mentioned company, with the sanction of a special resolution of the company by whom they were appointed conferring either a general authority on the liquidators or an authority in respect of any particular arrangement, can receive, in compensation or in part compensation for such transfer or sale, shares or other like interest in such other company, for the purpose of distribution amongst the members of the company which is being wound up, or may, in lieu of receiving cash, shares, or other like interests, or in addition thereto, participate in the profits of or receive any other benefit from the purchasing company.

(2). Any sale made or arrangement entered into by the liquidators in pursuance of this section shall be binding on the members of the company which is being wound up, subject to this proviso, that if any member of the company which is being wound up, who has not voted in favour of the special resolution passed by the company of which he is a member, at either of the meetings held for the passing the same, expresses his dissent from any such special resolution, in writing, addressed to the liquidators or one of them, and left at the head office of the company not later than seven days after the date of the meeting at which such special resolution was passed, such dissentient member may require the liquidators to do one of the following things as the liquidators may prefer, that is to say: (1) Either to abstain from carrying such resolution into effect; or (2) to purchase the interest held by such dissentient member, at a price to be determined in manner hereinafter mentioned, such purchase-money to be paid before the company is dissolved, and to be raised by the liquidators in such manner as may be determined by special resolution.

(3). No special resolution shall be deemed invalid for the purposes of this section by reason that it is passed antecedently to or concurrently

with any resolution for winding up the company, or for appointing liquidators;

(4). The price to be paid for the purchase of the interest of any dissentient member may be determined by agreement; but if the parties dispute about the same such dispute shall be settled by arbitration;

(5). For the purpose of such arbitration the liquidator shall appoint one arbitrator, and the dissentient member shall appoint another, and the two arbitrators thus chosen (or in case they disagree, the County Judge) shall appoint a third arbitrator;

(6). The arbitrators thus chosen or any two of them, or the arbitrator of one party and an arbitrator appointed by the County Judge (in case of the refusal or neglect of either party to appoint an arbitrator) shall finally determine the matter in dispute;

(7). In case of the disagreement of two arbitrators, where two only are acting, they may appoint an umpire, whose award shall be conclusive.

LIABILITY OF CONTRIBUTORIES.

14. As soon as may be after the commencement of the winding up of a company, the liquidator shall settle a list of contributories.

2. Every shareholder or member of the company or his representative is liable to contribute the amount unpaid on his shares of the capital, or on his liability to the company or to its members or creditors, as the case may be, under the Act, charter or instrument of incorporation of the company; and the amount which he is liable to contribute shall be deemed assets of the company, and to be a debt due to the company payable as may be directed or appointed under this Act.

3. Where a shareholder has transferred his shares under circumstances which do not by law free him from liability in respect thereof, or where he is by law liable to the company or its contributories or any of them to an amount beyond the amount unpaid on his shares, he shall be deemed a member of the company for the purposes of this Act, and shall be liable to contribute as aforesaid to the extent of his liabilities to the company or the contributories independently of this Act, and the amount which he is so liable to contribute shall be deemed assets and a debt as aforesaid.

4. The list of contributories shall distinguish between persons who are contributories as being representatives of or liable for others.

5. It shall not be necessary where the personal representative of any deceased contributory is placed on the list to add the heirs and devisees of such contributory; nevertheless such heirs or devisees may be added at any time afterwards.

6. Any list so settled shall be *prima facie* evidence of the liability of the persons named therein to be contributories.

15. The list of contributories may be settled by the Court, in which case the liquidator shall make out and leave at the chambers of the Judge a list of the contributories of the company; and such list shall be verified by the affidavit of the liquidator, and shall, so far as is practicable, state the respective addresses of, and the number of shares or extent of interest to be attributed to, each such contributory, and distinguish the several classes of contributories; and such list may from time to time, by leave of the Judge, be varied or added to by the liquidator.

2. Upon the list of contributories being left at the chambers of the Judge, the liquidator shall obtain an appointment for the Judge to settle the same, and shall give notice in writing of such appointment to every person included in the list, and stating in what character; and for what number of shares, or interest, such person is included in the list; and in case any variation in or addition to such list is at any time made by the liquidator, a similar notice in writing shall be given to every person to whom such variation or addition applies. All such notices shall be served four clear days before the day appointed to settle such list, or such variation or addition.

3. The result of the settlement of the list of contributories shall be stated in a certificate by the Clerk of the Court; and certificates may be made from time to time for the purpose of stating the result of such settlement down to any particular time, or to any particular person, or stating any variation of the list.

16. If any person made a contributory as personal representative of a deceased contributory makes default in paying any sum to be paid by him, proceedings may be taken for administering the personal and real estate of such contributory, or either of such estates, and for compelling payment thereout of the money due.

17. The liquidators may, at any time and before they have ascertained the sufficiency of the assets of the company, call on all or any of the contributories, for the time being settled on the list of contributories to pay, to the extent of their liability, all or any sums the liquidators deem necessary to satisfy the debts and liabilities of the company, and the costs, charges and expenses of winding it up and for the adjustment of the rights of the contributories amongst themselves; and the liquidators may, in making a call, take into consideration the probability that some of the contributories upon whom the call is made, may partly or wholly fail to pay their respective portions of the same.

18. Where a person's name is on the list of contributories or is liable to be placed thereon, he shall be subject in respect of his liability, and on the application of the liquidator, to arrest and imprisonment, like any other

debtor; and he shall for that purpose be deemed a debtor to the Company, and a debtor to the liquidator, and his arrest may be by an order of the County Court Judge, whether the amount of his liability exceeds or not the ordinary jurisdiction of the said court; and his being placed on the list of contributories under this Act shall be deemed a judgment, and the liquidator shall be deemed a creditor, within the meaning of the Act respecting Arrest and Imprisonment for Debt: and the said persons shall respectively have the same remedies, and the County Court and Judges and other officers of justice shall in such cases have the same powers and duties (as nearly as may be), as in corresponding cases under the said Act.

LIQUIDATOR'S DUTIES.

19. No liquidator shall employ any counsel, solicitor, or attorney-at-law without the consent of the Inspectors, or of the contributories.

2. No liquidator or inspector shall purchase, directly or indirectly, any part of the stock in trade, debts or assets of any description of the estate.

3. The liquidator shall deposit at interest in some chartered bank to be indicated by the inspectors or by the Court, all sums of money which he may have in his hands, belonging to the company, whenever such sums amount to one hundred dollars;

4. Such deposit shall not be made in the name of the liquidator generally, on pain of dismissal; but a separate deposit account shall be kept for the company of the moneys belonging to the company, in the name of the liquidator as such, and of the inspectors (if any); and such moneys shall be withdrawn only on the joint cheque of the liquidator and one of the inspectors, if there be any.

5. At every meeting of the contributories, the liquidators shall produce a bank pass book, showing the amount of deposits made for the company, the dates at which such deposits were made, the amounts withdrawn and dates of such withdrawal; of which production mention shall be made in the minutes of such meeting, and the absence of such mention shall be *prima facie* evidence that such pass book was not produced at the meetings;

6. The liquidator shall also produce such pass book whenever so ordered by the Court at the request of the inspectors or of a contributory, and on his refusal to do so, he shall be treated as being in contempt of the court.

7. Every liquidator or inspector shall be subject to the summary jurisdiction of the Court in the same manner and to the same extent as the ordinary officers of the Court are subject to its jurisdiction; and the performance of his duties may be compelled, and all remedies sought or demanded for enforcing any claim for a debt, privilege, mortgage, lien or right of pro-

perty upon, in or to any effects or property in the hands, possession or custody of a liquidator, may be obtained by an order of the Court on summary petition, and not by any suit, attachment, seizure or other proceeding of any kind whatever; and obedience by the liquidator to such order may be enforced by such Court under the penalty of imprisonment, as for contempt of the Court or disobedience thereto; or he may be removed in the discretion of the Court.

EXPENSES.

20. All costs, charges and expenses properly incurred in the voluntary winding up of a company, including the remuneration of the liquidators, shall be payable out of the assets of the company, in priority to all other claims.

21. In case of their being no agreement or provision fixing the remuneration of a liquidator, he shall be entitled to a commission on the net proceeds of the estate of the company of every kind, after deducting expenses and disbursements, such commission to be of five per cent. on the amount realized, not exceeding one thousand dollars, the further sum of two and a half per cent. on the amount realized in excess of one thousand dollars, and not exceeding five thousand dollars, and a further sum of one and a quarter per cent. on the amount realized in excess of five thousand dollars; which said commission shall be in lieu of all fees and charges for his services.

MEETINGS OF CONTRIBUTORIES.

22. If any vacancy occurs in the office of liquidators appointed by the company, by death, resignation or otherwise, a general meeting for the purpose of filling up such vacancy may be convened by the continuing liquidators, if any, or if none, then by any contributory of the company;

(2). The liquidators may from time to time, during the continuance of the winding up, summon general meetings of the company for the purpose of obtaining the sanction of the company by special resolution or extraordinary resolution, or for any other purposes they think fit;

(3). In the event of the winding-up continuing for more than one year, the liquidators shall summon a general meeting of the company at the end of the first year, and of each succeeding year from the commencement of the winding-up, or as soon thereafter as may be convenient; and shall lay before such meeting an account, showing their acts and dealings, and the manner in which the winding-up has been conducted during the preceding year.

(4). The liquidator shall also call meetings of the contributories whenever required in writing so to do, by the inspector or five contributories, or by the Court, and he shall state succinctly in the notice calling any meeting, the purpose thereof.

(5). The contributories may, from time to time, at any meeting determine where the subsequent meetings shall be held; and in the absence of such a resolution all meetings of the contributories shall be held at the office of the liquidator or of the company, unless otherwise ordered by the Court.

(6). Notice of any meeting shall for the purposes of this Act be deemed to be duly given, and the meeting to be duly held, whenever such notice is given and meeting held in manner prescribed by the Act, charter or instrument of incorporation or by the regulations of the company, or by the Court;

(7). Or, notice of the meeting may be given by publication thereof for at least two weeks in the *Ontario Gazette*, or by such other or additional notice as the Court or the Inspector or the company may direct, and by also, except where the Court otherwise directs, addressing notices of the meeting to the contributories within the Province, and to the representatives, within the Province, of contributories who reside out of the Province, and the said notices shall be posted at least ten days before the day on which the meeting is to take place, the postage being prepaid by the liquidator.

(8). No contributory shall vote at any meeting unless present personally, or represented by some person having a written authority (to be filed with the liquidator) to act on his behalf at the meeting or generally; and when a poll is taken reference shall be had to the number of votes to which each member is entitled by the Act, charter or instrument of incorporation or the regulations of the company.

ASSISTANCE OF THE COURT.

23. The liquidators or any contributory of the company may apply to the Court to determine any question arising in the matter of such winding-up; or to exercise all or any of the powers following; and the Court, if satisfied that the determination of such question, or the required exercise of power, will be just and beneficial, may accede wholly or partially to such application, on such terms and subject to such conditions as the Court thinks fit; or it may make such other order on such application as the Court thinks just.

2. The Court, at any time after the presentation of a petition for winding up a company and before making an order for winding up the company, may restrain further proceedings in any action, suit, or proceeding against the company (other than under the Insolvent Acts in force at the time, or any other authority with which the Legislature has no jurisdiction) in and upon such terms as the Court thinks fit.

3. The Court may make an order that no suit, action or other proceeding shall be proceeded with or commenced against the company except

with the leave of the Court, and subject to such terms as the Court may impose; but this section does not apply to proceedings under any Act of the Parliament of Canada under its jurisdiction in matters of bankruptcy and insolvency or otherwise; a copy of such order shall forthwith be advertised as the Court may direct.

4. The Court may settle the list of contributories.

5. The Court may direct meetings of the contributories to be summoned, held and conducted in such manner as the Court thinks fit, for the purpose of ascertaining their wishes, and may appoint a person to act as chairman of any such meeting, and to report the result of such meeting to the Court.

6. The Court may require any contributory for the time being settled on the list of contributories, or any trustee, receiver, banker or agent or officer of the company, to pay, deliver, convey, surrender or transfer forthwith, or within such time as the Court directs, to or into the hands of the liquidator, any sum or balance, books, papers, estate, or effects which happen to be in his hands for the time being, and to which the company is *prima facie* entitled.

7. The Court may make an order on any contributory for the time being settled on the list of contributories, directing payment to be made, in manner in the said order mentioned, or any moneys due from him or from the estate of the person whom he represents, to the company, exclusive of any moneys which he or the estate of the person whom he represents may be liable to contribute by virtue of any call made or to be made by the Court in pursuance of this Act.

8. The Court may order any contributory, purchaser or other person from whom money is due to the company to pay the same into any bank appointed for this purpose in any general order made under this Act, or in default of such bank into any bank named in the order, or into any branch of such bank, to the account of the official liquidator instead of to the official liquidator, and such order may be enforced in the same manner as if it had directed payment to the official liquidator.

9. Any order made by the Court in pursuance of this Act upon any contributory shall, subject to the provisions herein contained for appealing against such order, be conclusive evidence that the moneys, if any, thereby appearing to be due, or ordered to be paid, are due; and all other pertinent matters stated in such order are to be taken to be truly stated, as against all persons, and in all proceedings whatsoever, with the exception of proceedings taken against the real estate of any deceased contributory, in which case such order shall only be *prima facie* evidence for the purpose of charging his real estate, unless his heirs or devisees were on the list of contributories at the time the order was made

10. The Court may make such order for the inspection by the creditors and contributories of the company of its books and papers as the Court thinks just; and any books and papers in the possession of the company may be inspected in conformity with the order of the Court, but not further or otherwise.

11. The Court may, at any time after the commencement of the winding up of the company, summon to appear before the Court or liquidator any officer of the company, or any other person known or suspected to have in his possession any of the estate or effects of the company, or supposed to be indebted to the company, or any person whom the Court may deem capable of giving information concerning the trade, dealings, estate or effects of the company; and in case of refusal to appear or answer the questions submitted, he may be committed and punished by the Judge as for a contempt.

12. The Court may require any such officer or person to produce any books, papers, deeds, writings, or other documents in his custody or power relating to the company.

13. If any person so summoned, after being tendered the fees to which a witness is entitled in the County Courts, refuses to come before the Court or liquidator at the time appointed, having no lawful impediment, the Court may cause such person to be apprehended, and brought before the Court or liquidator for examination.

14. The Court or liquidator may examine upon oath, any person appearing, or brought before them in the manner aforesaid concerning the affairs, dealings, estate or effects of the company, and may reduce into writing the answers of every such person, and require him to subscribe the same.

15. In any proceeding under this Act, the Court may order a writ of *subpœna ad testificandum*, or of *subpœna duces tecum* to issue, commanding the attendance as a witness of any person within the limits of Ontario.

16. Where any person claims any lien on papers, deeds, or writings or documents produced by him, such productions shall be without prejudice to the lien; and the Court shall have jurisdiction in the winding up to determine all questions relating to such lien.

17. Where in the course of winding up any company under this Act, it appears that any past or present director, manager, official or other liquidator, or any officer of such company has misapplied, or retained in his own hands, or become liable or accountable for, any moneys of the company, or been guilty of any misfeasance or breach of trust in relation to the company, the Court may, on the application of any liquidator, or of any contributory of the company, notwithstanding that the offence is one for which the offender is criminally responsible, examine into the conduct of such director, manager, or other officer, and compel him to repay any

moneys so misapplied or retained, or for which he has become liable or accountable, together with interest after such rate as the Court thinks just, or to contribute such sums of money to the assets of the company by way of compensation in respect of such misapplication, retainer, misfeasance, or breach of trust, as the Court thinks just

24. If at any time any contributor who desires to cause any proceeding to be taken which in his opinion, would be for the benefit of the company, and the liquidator, under the authority of the contributories or of the inspectors, refuses or neglects to take such proceedings, after being duly required to do so, such contributory shall have the right to obtain an order of the Court authorizing him to take such proceeding in the name of the liquidator or company, but at his own expense and risk, upon such terms and conditions as to indemnity to the liquidator, as the Court may prescribe; and thereupon any benefit derived from such proceedings shall belong exclusively to the contributory instituting the same for his benefit and that of any other contributory who may have joined him in the institution of such proceeding; but if, before such order is granted, the liquidator shall signify to the Court his readiness to institute such proceeding for the benefit of the company, an order shall be made prescribing the time within which he shall do so and in that case the advantage derived from such proceeding shall appertain to the company.

25. If any vacancy occurs in the office of liquidator appointed by the company, by death, resignation, or otherwise, the company in general meeting may fill up such vacancy;

2. If from any cause there is no liquidator acting, either provisionally or otherwise, the Court may on the application of a contributory, appoint a liquidator or liquidators;

3. The Court may also on due cause shown, remove any liquidator, and appoint another liquidator.

4. When there is no liquidator the estate shall be under the control of the Court until the appointment of a new liquidator.

26. Any one or more contributories whose claims in the aggregate exceed five hundred dollars, who may be dissatisfied with the resolutions adopted or orders made by the contributories or the inspectors, with any action of the liquidator for the disposal of the property of the company, or any part thereof, or for postponing the disposal of the same, or with reference to any matter connected with the management or winding up of the estate, may, within four clear days after the meeting of the contributories in case the subject of dissatisfaction is a resolution or order of the contributories, or within four clear days after becoming aware or having notice of the resolution of the inspectors or action of the liquidator where such resolution or action is the subject of dissatisfaction, give to the liquidator notice that he or they will apply to the Court, on the day and at the

hour fixed by such notice, and not being later than four clear days after such notice has been given, or as soon thereafter as the parties may be heard before such Court, to rescind such resolutions or orders;

2. The Court, after hearing the inspectors, the liquidators and contributories present at the time and place so fixed, may approve, rescind or modify the said resolutions or orders;

3. In case of the application being refused the party applying shall pay all costs occasioned thereby, and in other cases the costs and expenses shall be at the discretion of the Court.

27. Any party who is dissatisfied with any order or decision of the Court in any proceeding under this Act, may appeal therefrom to the Court of Appeal, or to any one of the Judges of the said Court; but any appeal to a single Judge may, in his discretion, be referred, on a special case to be settled, to the full Court, and on such terms in the meantime as he may think necessary and just.

2. No such appeal shall be entertained unless the appellant has, within eight days from the rendering of such final order or judgment, taken proceedings on the said appeal, nor unless within the said time he has made a deposit or given sufficient security before a Judge that he will duly prosecute the said appeal and pay such damages and costs as may be awarded to the respondent.

3. If the party appellant does not proceed with his appeal, as the case may be, according to the law or the rules of practice, the Court, on the application of the respondent, may dismiss the appeal, and condemn the appellant to pay the respondent the costs by him incurred.

4. The judgment of the said Court of Appeal shall be final.

28. Any powers by this Act conferred on the Court shall be deemed to be in addition to, and not in restriction of, any other powers subsisting, either at law or in equity, of instituting proceedings against any contributory, or against any debtor of the company for the recovery of any call or other sums due from such contributory, or against any debtor of the company, for the recovery of any call or other sum due from such contributory or debtor, or his estate, and such proceedings may be instituted accordingly.

29. All orders made by the Court may be enforced in the same manner as orders of such Court made in any suit pending therein, or orders of the Court under the Insolvent Acts in force at the time may be enforced; and for the purposes of this part of the Act, the County Courts and the Judges thereof shall, in addition to their ordinary powers, have the same power of enforcing any orders made by it, as the Court of Chancery has in relation to matters within the jurisdiction of that Court; and for the last-

mentioned purposes the jurisdiction of the County Court Judge shall be deemed to be co-extensive in local limits with the jurisdiction of the Court of Chancery.

30. The various County Courts of the Province, and the Judges of the said Courts respectively shall be auxiliary to one another for the purposes of this Act; and the winding up of a company, or any matter or proceeding relating thereto, may be transferred from one County Court to another with the concurrence, or by the order or orders, of the two courts or by an order of a Judge of the Court of Appeal.

MATTERS OF PRACTICE.

31. Where any order made by one Court is required to be enforced by another Court, an office copy of the order so made, certified by the clerk of the Court which made the same, and under the seal of such Court, shall be produced to the proper officer of the Court required to enforce the same, and the production of such copy shall be sufficient evidence of such order having been made; and thereupon such last-mentioned Court shall take such steps in the matter as may be requisite for enforcing such order in the same manner as if it were the order of the Court enforcing the same.

32. Any application to the Court for winding up of a company under this Act shall be by petition; and the petition may be presented by the company, or by any contributory or contributories of the company.

(2). Upon hearing the petition the Court may dismiss the same, with or without costs, or may adjourn the hearing, conditionally or unconditionally, and may make an interim order, or any other order that it deems just.

33. The Court at any time after an order has been made for winding up a company, may, upon the application by motion of any contributory, and upon proof to the satisfaction of the Court that all proceedings in relation to such winding up ought to be stayed, make an order staying the same, either altogether or for a limited time, on such terms and subject to such conditions as the Court deems fit.

34. The rules of procedure for the time being as to amendments of pleadings and proceedings in the County Court, shall as far as practicable apply to all pleadings and proceedings under this Act; and any Court or liquidator before whom such proceedings are being carried on shall have full power and authority to apply the appropriate rules as to amendments to the proceedings so pending before him; and no pleading or proceeding shall be void by reason of any irregularity or default which can or may be amended or disregarded under the rules and practice of the Court.

35. In every petition, application, motion, or other pleading or proceeding under this Act, the parties may state the facts upon which they

rely, in plain and concise language ; and to the interpretation thereof, the rules of construction applicable to such language in the ordinary transactions of life shall apply.

36. All books, accounts, and documents of the company and of the liquidator, shall, as between the contributories of the company, be *prima facie* evidence of the truth of all matters purporting to be therein recorded.

37. All rules, writs of subpœna, orders and warrants issued by any Court in any matter or proceeding under this Act, may be validly served in any part of Ontario upon the party affected or to be affected thereby, and the service of them may be validly made in such manner as is now prescribed for similar services, and the person charged with such service shall make his return thereof under oath.

38. Except when otherwise provided, four clear juridical days' notice of any petition, motion, order or rule shall be sufficient ; and service of such notice shall be made in such manner as a similar service in a civil suit.

39. Any affidavit, affirmation or declaration required to be sworn or made under the provisions or for the purposes of this Act, may be sworn or made in Ontario, before the liquidator, or before any liquidator, judge, notary public, commissioner for taking affidavits, or Justice of the Peace ; and out of Ontario, before any Judge of a Court of Record, any commissioner for taking affidavits to be used in any Court in Canada, any notary public, the chief municipal officer for any town or city, any British consul or vice-consul, or any person authorized by or under any Statute of the Dominion or of this Province to take affidavits.

2. All Courts, judges, justices, commissioners and persons acting judicially, shall take judicial notice of the seal, or stamp or signature (as the case may be) of any such Court, judge, notary public, commissioner, justice, chief municipal officer, consul, vice-consul, liquidator or other person, attached, appended or subscribed to any such affidavit, affirmation or declaration, or to any other document to be used for the purposes of this Act.

DISSOLUTION OF COMPANY.

40. As soon as the affairs of the company are fully wound up, the liquidators shall make up an account showing the manner in which such winding up has been conducted, and the property of the company disposed of ; and thereupon they shall call a general meeting of the company for the purpose of having the account laid before them, and hearing any explanation that may be given by the liquidators ; the meeting shall be called by advertisement, specifying the time, place, and object of such meeting ; and the advertisement shall be published one month at least previously thereto.

(2). The liquidator shall make a return to the Provincial Secretary of such meeting having been held, and of the date at which the same was held; which return shall be filed in the office of the Provincial Secretary; and on the expiration of three months from the date of the filing of such return, the company shall be deemed to be dissolved.

41. Or whenever the affairs of the company have been completely wound up, the Court may make an order that the company be dissolved from the date of such order, and the company shall be dissolved accordingly: which order shall be reported by the liquidator to the Provincial Secretary.

42. If the liquidator makes default in transmitting to the Provincial Secretary the return mentioned in the fortieth section, or in reporting the order (if any) declaring the company dissolved, he shall be liable to a penalty not exceeding twenty dollars for every day during which he is in default.

43. All dividends deposited in a Bank and remaining unclaimed at the time of the dissolution of the company, shall be left for three years in the Bank where they are deposited, and if still unclaimed, shall then be paid over by such Bank, with interest accrued thereon, to the Treasurer of Ontario, and, if afterwards duly claimed, shall be paid over to the persons entitled thereto.

44. Every liquidator shall, within thirty days after the date of the dissolution of the company, deposit in the Bank appointed or named as hereinbefore provided for, any other money belonging to the estate then in his hands not required for any other purpose authorized by this Act, with a sworn statement and account of such money, and that the same is all he has in his hands; and he shall be subject to a penalty not exceding ten dollars for every day on which he neglects or delays such payment; and he shall be a debtor to Her Majesty for such money, and may be compelled as such to account for and pay over the same.

(2.) The money so deposited shall be left for three years in the Bank, and shall be then paid over with interest to the Treasurer of the Province, and if afterwards claimed shall be paid over to the person entitled thereto.

(3.) Where any company has been wound up under this Act, and is about to be dissolved, the books, accounts and documents of the company and of the liquidators may be disposed of in such a way as the company by an extraordinary resolution directs.

(4.) After the lapse of five years from the date of such dissolution no responsibility shall rest on the company or the liquidators, or any one to whom the custody of such books, accounts and documents has been com-

mitted, by reason that the same or any of them cannot be made forthcoming to any party or parties claiming to be interested therein.

RULES TO CARRY OUT.

45. The Board of County Judges from time to time shall make, and frame and settle the forms, rules and regulations to be followed and observed in proceedings under this Act, and shall make rules as to the costs, fees and charges which shall or may be had, taken or paid in all such cases by or to attorneys, solicitors or counsel, and by or to officers of courts, whether for the officers or for the Crown, and by or to sheriffs, or other persons whom it may be necessary to provide for, or for any service performed or work done under this Act.

(2). The Board of County Judges or any three of them, shall under their hands, certify to the Chief Justice of the Court of Appeal, all Rules and Forms made under this Act and the Judges of the said Court (of whom the said Chief Justice shall be one) may approve of, disallow or amend any such Rules or Forms; and the Rules or Forms so approved of (with or without amendment, as the case may be) shall have the same force and effect as if they had been made and included in this Act.

(3). Until such forms, rules and regulations are so approved and subject to any which shall be approved, the practice under this Act shall in cases not hereinbefore provided for, be the same (as nearly as may be), as under the Insolvent Acts for the time being in force in this Province.

CHAPTER 8.

AN ACT TO MAKE CERTAIN AMENDMENTS IN THE REVISED STATUTES.

(41 Vic., Cap. 8, Sec. 16.)

[*Assented to 7th March*, 1878.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

16. The Revised Statute respecting the Incorporation of Joint Stock Companies by Letters Patent, chapter one hundred and fifty, is amended by inserting therein the following:—

17*a*. The directors of any Company which has been heretofore incorporated or shall be hereafter incorporated under "The Ontario Joint Stock Companies' Letters Patent Act," or "The Ontario Joint Stock Companies' Letters Patent Act 1874," may make a by-law for creating and issuing any part of the capital stock as preference stock, giving the same such preference and priority, as respects dividends and otherwise over ordinary stock as may be declared by such by-law.

(2). Such by-law may provide that the holders of such preference shares shall have the right to select a certain stated proportion of the board of directors, or may give them such other control over the affairs of the Company as may be considered expedient.

(3). No such by-law shall have any force or effect whatever until after it has been unanimously sanctioned by the vote of the shareholders, present in person or by proxy at a general meeting of the Company duly called for considering the same, or unanimously sanctioned in writing by the shareholders of such Company.

(4). All the provisions of The Ontario Joint Stock Letters Patent Act not inconsistent with this Act shall apply to Companies who may create and issue preferential stock hereinunder; and holders of such stock shall be shareholders within the meaning of the said Act, and shall in all respects possess the rights and be subject to the liabilities of shareholders within the meaning of the said Act, provided, however, that in respect of dividends and otherwise they shall, as against the original or ordinary shareholders, be entitled to the preference given by any by-law as aforesaid.

(5). Nothing in this section shall affect or impair the rights of creditors of any Company.

QUEBEC STATUTES.

CHAPTER 24.

THE JOINT STOCK COMPANIES GENERAL CLAUSES ACT.

(31 VIC., CAP. 24.)

[*Assented to February* 24, 1868.]

Interpretation of terms, s. 1.
Application of Act, s. 2.
To be Incorporated with Special Act s. 2-3.
Powers of Company, s. 4-5.
DIRECTORS:
Number of, s. 6.
Qualification of, s. 8.
Election of, s. 9.
Elections not otherwise provided for s. 10.
Failure of Election, s. 11.
Powers of Directors, s. 12.
Special Meetings, s. 13.
Proof of By-laws, s. 14.
Transfer of Stock, s. 15.
Allotment of Stock, s. 16.
Calls, s. 17, 18, 19.
Forfeiture of Shares, s. 20.
Calls to be paid before transfer, s. 21.
Members in arrears not to vote s. 22.
Books to be kept, s. 23.
Directors may refuse transfer, s. 24.
Books to be kept open, s. 26.
Books to be evidence, s, 27.
Penalty for untrue entries, s. 28.
Penalty for not keeping, s. 30.
Contracts, s. 31.
Company not to buy stock, s. 32.
Liability of Members, s. 33.
Liability of Trustees, etc., s. 35.
Dividends, s. 37.
No loans to Members, s. 38.
Liability for wages, etc., s. 39.
Actions, s. 40, 41.
Short title, s. 42.
Repeal, s. 43.

HER MAJESTY, by and with the advice and consent of the Legislature of Quebec, enacts as follows:—

I. The following expressions, both in this and the Special Act, shall have the meanings hereby assigned to them, unless there is something in the subject or context repugnant to such construction, that is to say—

1. The expression "the Special Act" means any Act incorporating a Company for any of the purposes contemplated by this Act, and also all Acts amending such Act;

2. The expression "the Company" means the Company incorporated by the Special Act;

3. The expression "the undertaking" means the whole of the works and business of every kind which the Company is authorized to carry on;

4. The expression "real estate" or "land" includes all immoveable property of every kind;

5. The expression "shareholder" means every subscriber to, or holder of stock in the Company, and extends to and includes the personal representatives of the shareholder.

2. When not otherwise expressly enacted, this Act shall apply to every Joint Stock Company incorporated by any Act hereafter to be passed for any of the following purposes:—

1. Carrying on any kind of manufacturing, shipbuilding, mechanical, printing and publishing, or chemical business;

2. Mining for gold, silver, copper, or other metals or ores, or for coal, plumbago, or other minerals;

3. Washing, dressing, smelting, and otherwise preparing for market the ores of all kinds of metals;

4. Erecting, maintaining and using dams, sluices and apparatus for excavating and washing auriferous earth in the process of gold mining;

5. Opening and working quarries of marble, slate, or other economic minerals or mineral substances, and the manufacture, exportation, and sale thereof;

6. Boring for, opening, and using petroleum, salt, or other mineral springs;

7. Erecting and maintaining any building or buildings to be used in whole or in part as a mechanics' institute or public reading or lecture-room, or gymnasium, or as a public hotel, or as baths or bath-houses, or for skating or curling rinks, or for agricultural or horticultural fairs or exhibitions, or for libraries, or for educational, literary, scientific, or religious purposes, or as houses to be leased;

8. Carrying on any fishery or fisheries in this Province or the waters thereto adjacent, or in the Gulf of St. Lawrence, and building and equipping vessels for such fishery or fisheries;

9. Carrying on any forwarding business, and constructing, owning, chartering, or leasing ships, steamboats, wharves, roads, or other property required for the purpose of such forwarding business;

10. Acquiring, constructing and maintaining any plank, macadamized or gravel road, or any bridge, pier, wharf, dry-dock or marine railway, or

any dam, sluice, raceway, or other hydraulic apparatus for manufacturing use of any kind;

11. Acquiring, holding and carrying on any model farm or garden, and dealing in improved stock, seed, grain, and other articles for agricultural use;

12. Reclaiming and improving tracts of marshy and other waste land by drainage, or planting of trees, or otherwise;

13. Supplying any place with gas or water, or with both gas and water;

14. Constructing any line or lines of telegraph;

15. Acquiring or constructing, and maintaining any dam, slide, pier, boom, or other work necessary to facilitate the transmission of timber down any river or stream in the Province, and blasting rocks, dredging, or removing shoals and other impediments, or improving otherwise the navigation of such streams for such purpose;

And this Act shall be incorporated with every such Act, and all the clauses and provisions of this Act, unless expressly varied or excepted by any such Act, shall apply to the Company thereby chartered so far as applicable thereto, and shall as well as the clauses and provisions of every other Act incorporated with such Act form part of such Act, and be construed together therewith as forming one Act.

3. For the purpose of incorporating this Act, or any of its provisions with a Special Act, it shall not be necessary in such Act to enact that the clauses of this Act or such of them as in such Act may be particularly designated to that end shall be incorporated with such Act; but all such clauses, save in so far as they are expressly varied or excepted by such Act, shall be construed as if they were formally embodied and reproduced therein.

4. Any Company incorporated for any of the above purposes under any Special Act shall be a body corporate under the name declared in the Special Act, and may acquire, hold, alienate, and convey any real estate requisite for the carrying on of the undertaking of such Company, and shall be invested with all the powers, privileges and immunities requisite to carry into effect the intentions and objects of this Act and of the Special Act, and which are incident to such corporation, or expressed or included in the Interpretation Act.

5. All powers given by the Special Act to the Company shall be exercised subject to the provisions and restrictions contained in this Act.

6. The affairs of the Company shall be managed by a board of not less than three nor more than nine directors.

7. The persons named as such in the Special Act shall be the directors of the Company until replaced by others duly named in their stead.

8. No person shall be elected or named as a director thereafter, unless he is a shareholder owning stock absolutely in his own right, and not in arrear in respect of any call thereon, and the major part of the other directors of the Company shall further at all times be resident in Canada, and subjects of Her Majesty by birth or naturalization.

9. The after directors of the Company shall be elected by the shareholders in general meeting of the Company assembled, at suc[h] times, in such wise, and for such term, not exceeding two years, as the Special Act, or (in default thereof,) the by-laws of the Company may prescribe.

10. In default only of other express provisions in such behalf by the Special Act, or the by-laws of the Company :—

1. Such election shall take place yearly, all the members of the board retiring, and, if otherwise qualified, being eligible for re-election;

2. Notice of the time and place for holding the general meetings of the Company shall be given at least ten days previously thereto, in some newspaper published at or as near as may be to the office or chief place of business of the Company;

3. At all general meetings of the Company every shareholder shall be entitled to as many votes as he owns shares in the Company, and may vote by proxy;

4. Elections of directors shall be by ballot;

5. Vacancies occurring in the board of directors may be filled for the unexpired remainder of the term by the board from the qualified shareholders of the Company;

6. The directors shall, from time to time, elect from among themselves a president of the Company; and shall also name, and may remove at pleasure, all other officers thereof.

11. If at any time an election of directors be not made, or do not take effect at the proper time, the Company shall not be held to be thereby dissolved; but such election may take place at any general meeting of the Company duly called for that purpose; and the retiring directors shall continue in office until their successors are elected.

12. The directors of the Company shall have full power in all things to administer the affairs of the Company, and may make, or cause to be made for the Company, any description of contract which the Company may by law enter into, and may, from time to time, make by-laws, not contrary to law, to regulate the allotment of stock, the making of calls thereon, the payment thereof, the issue and registration of certificates of stock, the forfeiture of stock for non-payment, the disposal of forfeited stock and of the proceeds thereof, the transfer of stock, the declaration and payment of

dividends, the number of the directors, their term of service, the amount of their stock qualification, the appointment, functions, duties, and removal of all agents, officers and servants of the Company, the security to be given by them to the Company, their remuneration, and that (if any) of the directors, the time at which, and the place within this Province where, the annual meetings of the Company shall be held, the place or places where its business shall be conducted, the calling of meetings, regular and special, of the board of directors, and of the Company, the quorum, the requirements as to proxies, and the procedure in all things at such meetings, the imposition and recovery of all penalties and forfeitures admitting of regulation, and the conduct in all other particulars of the affairs of the Company, and may, from time to time, repeal, amend, or re-enact the same; but every such by-law and every repeal, amendment, or re-enactment thereof, unless in the meantime confirmed at a general meeting of the Company duly called for that purpose, shall only have force until the next annual meeting of the Company, and in default of confirmation thereat, shall, from that time only, cease to have force.

13. One-fourth part in value of the shareholders of the Company shall at all times have the right to call a special meeting thereof for the transaction of any business specified in such written requisition and notice as they may issue to that effect.

14. A copy of any by-law of the Company, under their seal, and purporting to be signed by any officer of the Company, shall be received as *prima facie* evidence of such by-law in courts of law in this Province.

15. The stock of the Company shall be deemed personal estate, and shall be transferable in such manner only, and subject to all such conditions and restrictions as by this Act or by the Special Act, or the by-laws of the Company shall be prescribed.

16. If the Special Act makes no other definite provision, the stock of the Company shall be allotted when and as the directors by by-law or otherwise may ordain.

17. The directors of the Company may call in and demand from the shareholders thereof respectively all sums of money by them subscribed at such times and places, and in such payments and instalments as the Special Act, or as this Act may require or allow, and interest shall accrue and fall due at the rate of six per cent. per annum upon the amount of any unpaid call from the day appointed for payment of such call.

18. Not less than ten per cent. upon the allotted stock shall by means of one or more calls be called in and made payable within one year from the incorporation of the Company, and for every year thereafter, at least a further five per cent. shall in like manner be called in and made payable, until the half shall have been so called in.

19. The Company may enforce payment of all calls and interest thereon by action in any competent Court; and by such action it shall not be necessary to set forth the special matter, but it shall be sufficient to declare that the defendant is a holder of one share or more, stating the number of shares, and is indebted in the sum of money to which the calls in arrear amount in respect of one call or more upon one share or more, stating the number of calls and the amount of each, whereby an action has accrued to the Company, and a certificate under their seal and purporting to be signed by any officer of the Company to the effect that the defendant is a shareholder, and that such call or calls has or have been made, and that so much is due by him and unpaid thereon shall be received in all Courts of law as *prima facie* evidence to that effect.

20. If after such demand or notice as by the Special Act or by-laws of the Company may be prescribed, any call made upon any share or shares be not paid within such time as by such Special Act or by-law may be limited in that behalf the directors in their discretion by vote to that effect reciting the facts and duly recorded in their minutes may summarily declare forfeited any shares, whereon such payment is not made; and the same shall thereupon become the property of the Company, and may be disposed of as by by-law or otherwise they may ordain.

21. No share shall be transferable until all previous calls thereon have been fully paid in, or until declared forfeited for non-payment of calls thereon, or sold under execution.

22. No shareholder being in arrear in respect of any call shall be entitled to vote at any meeting of the Company.

23. The Company shall cause a book or books to be kept by the Secretary, or by some other officer specially charged with that duty, wherein shall be kept correctly recorded—

1. Every by-law thereof;

2. The names alphabetically arranged of all persons who are or have been shareholders;

3. The address and calling of every such person while such shareholder;

4. The number of shares of stock held by each shareholder;

5. The amounts paid in and remaining unpaid respectively on the stock of each shareholder;

6. All transfers of stock in their order as presented to the Company for entry, with the date and other particulars of each transfer, and the date of the entry thereof; and

7. The names, addresses, and calling of all persons who are or have been directors of the Company, with the several dates at which each became or ceased to be such director.

24. The directors may refuse to allow the entry into any such book of any transfer not made by sale under execution, of stock whereof the whole amount has not been paid in; and whenever entry is made in such book of any such transfer of stock not fully paid in to a person not being apparently of sufficient means, the directors, jointly and separately, shall be liable to the creditors of the Company, in the same manner and to the same extent as the transferring shareholder but for such entry would have been; but if any director present when such entry is allowed, do forthwith, or if any director then absent, do within twenty-four hours after he shall have become aware thereof, and able so to do, enter on the minutes of the board of directors his protest against the same, and do within eight days thereafter publish such protest in at least one newspaper published at or as near as may be possible to the office or chief place of business of the Company, such director may thereby, and not otherwise, exonerate himself from such liability.

25. No transfer of stock, unless made by sale under execution, shall be valid for any purpose whatever, save only as exhibiting the rights of the parties thereto towards each other, and as rendering the transferee liable *ad interim*, jointly and severally, with the transferor to the Company and their creditors until entry thereof has been duly made in such book or books.

26. Such books shall, during reasonable business hours of every day, except Sundays and holidays, be kept open for the inspection of shareholders and creditors of the Company and their personal representatives at the office or chief place of business of the Company, and every such shareholder, creditor, or representative may make extracts therefrom.

27. Such books shall be *prima facie* evidence of all facts purporting to be thereby stated in any suit or proceeding against the Company or against any shareholder.

28. Every director, officer, or servant of the Company who knowingly makes or assists to make any untrue entry in any such book, or who refuses or neglects to make any proper entry therein, or to exhibit the same, or to allow the same to be inspected and extracts to be made therefrom, shall be liable to a penalty of one hundred dollars for every day of such untrue entry, and for every such refusal or neglect, and also in damages for all loss or injury which any party interested may have sustained thereby.

29. Every Company neglecting to keep such book or books so open for inspection shall forfeit its corporate rights.

30. The Company shall not be bound to see to the execution of any trust, whether express, implied or constructive in respect of any shares;

and the receipt of the shareholder in whose name the same may stand in the books of the Company shall be a valid and binding discharge to the Company for any dividend or money payable in respect of such shares, and whether or not notice of such trust shall have been given to the Company, and the Company shall not be bound to see to the application of money paid upon such receipt.

31. Every contract, agreement, engagement, or bargain made, and every bill of exchange drawn, accepted or endorsed, and every promissory note made, drawn or endorsed on behalf of the Company by any agent, officer, or servant of the Company in general accordance with his powers as such, under the by-laws of the Company shall be binding upon the Company, and in no case shall it be necessary to have the seal of the Company affixed to any such contract, agreement, engagement, bargain, bill of exchange, promissory note or cheque, or to prove that the same was made, drawn, accepted or endorsed, as the case may be, in pursuance of any by-law or special vote or order; nor shall the party so acting as agent, officer, or servant of the Company, be thereby subjected individually to any liability whatever to any third party therefor; provided always that nothing in this section shall be construed to authorize the Company to issue any note payable to the bearer thereof, or any promissory note intended to be circulated as money or as the note of a bank.

32. No Company shall use any of its funds in the purchase of stock in any other corporation, unless in so far as such purchase may be especially authorized by the Special Act, and also by the Act creating such other corporation.

33. Each shareholder until the whole amount of his stock has been paid up shall be individually liable to the creditors of the Company to an amount equal to that not paid up thereon; but shall not be liable to an action therefor by any creditor before an execution against the Company has been returned unsatisfied in whole or in part, and the amount due on such execution shall be the amount recoverable with costs against such shareholder.

34. The shareholders of the Company shall not as such be held responsible for any act, default or liability whatever of the Company, or for any engagement, claim, payment, loss, injury, transaction, matter or thing whatever relating to or connected with the Company, beyond the amount of their respective shares in the capital stock thereof.

35. No person holding stock in the Company as an executor, administrator, tutor, curator, guardian, or trustee, shall be personally subject to liability as a shareholder, but the estate and funds in the hands of such person shall be liable in like manner and to the same extent as the testator or intestate, minor, ward and interdicted person, or the person interested in such trust fund would be, if living and competent to act, and holding such

stock in his own name; and no person holding such stock as collateral security shall be personally subject to such liability, but the person pledging such stock shall be considered as holding the same, and shall be liable as a shareholder accordingly.

36. Every such executor, administrator, tutor, curator, guardian, or trustee shall represent the stock in his hands at all meetings of the Company, and may vote accordingly as a shareholder.

37. If the directors of the Company declare and pay any dividend when the Company is insolvent, or any dividend the payment of which renders the Company insolvent, or diminishes the capital stock thereof, they shall be jointly and severally liable as well to the Company as to the individual shareholders and creditors thereof for all the debts of the Company then existing, and for all thereafter contracted during their continuance in office, respectively; but if any director present when such dividend is declared, do forthwith, or if any director then absent do within twenty-four hours after he shall have become aware thereof and able so to do, enter on the minutes of the board of directors his protest against the same, and within eight days thereafter publish such protest in at least one newspaper published at, or as near as may be possible to, the office or chief place of business of the Company, such director may thereby, and not otherwise, exonerate himself from such liability.

38. No loan shall be made by the Company to any shareholder, and if such be made, all directors and other officers of the Company making the same, or in anywise assenting thereto, shall be jointly and severally liable to the amount of such loan, with interest, to the Company—and also to third parties to the extent of such loan, with legal interest—for all debts of the Company contracted from the time of the making of such loan to that of the repayment thereof.

39. The directors of the Company shall be jointly and severally liable to the laborers, servants and apprentices of the Company for all debts not exceeding one year's wages due for service performed for the Company whilst they are such directors respectively; but no director shall be liable to an action therefor, unless the Company has been sued therefor within one year after the debt became due, nor yet unless such director is sued therefor within one year from the time when he ceased to be such director, nor yet before an execution against the Company has been returned unsatisfied in whole or in part; and the amount due on such execution shall be the amount recoverable with costs against the directors.

40. Any description of action may be prosecuted and maintained between the Company and any shareholder thereof; and no shareholder, not being himself a party to such suit, shall be incompetent as a witness therein.

41. Service of all manner of summons or writ whatsoever upon the Company may be made by leaving a copy thereof at the office or chief place of business of the Company, with any grown person in charge thereof, or elsewhere with the President or Secretary thereof; or, if the Company have no known office or chief place of business, and have no known president or secretary, then upon return to that effect duly made, the Court shall order such publication as it may deem requisite to be made in the premises, for at least one month, in at least one newspaper; and such publication shall be held to be due service upon the Company.

42. Whenever this Act is referred to, it shall be sufficient, in citing the same, to use the expression "the Joint Stock Companies General Clauses Act."

43. The Act, chapter eighteen, of the Statutes of the late Province of Canada, passed in the 24th year of Her Majesty's reign, in so far as it is applicable to this Province, is repealed.

CHAPTER 42.

AN ACT TO AMEND THE JOINT STOCK COMPANIES GENERAL CLAUSES ACT.

(32 Vic. cap. 42.)

[*Assented to April* 3, 1867.

HER MAJESTY, by and with the advice and consent of the Legislature of Quebec, enacts as follows:—

1. The eighth sub-section of the second section of the Joint Stock Companies General Clauses Act is hereby so amended as to read in the following words:—

"Carrying on any fishery or fisheries and building and equipping vessels for such fishery or fisheries."

2. This Act shall be held to all intents, as forming part of the said Act, and the expression "the Joint Stock Companies General Clauses Act," shall be a sufficient citation as well of this Act as of the Act hereby amended.

CHAPTER 25.

AN ACT RESPECTING THE INCORPORATION OF JOINT STOCK COMPANIES.

(31 Vic., cap. 25.)

[*Assented to February 24th*, 1868.

Interpretation of Act.
Purposes enumerated.
Notice of Application.
Petition for Letters Patent.
Preliminary Conditions.
Issue of Letters Patent.
General Powers of Company.
Increase and Decrease of Capital.
Supplementary Letters Patent.
Powers to be Subject to Act.
DIRECTORS;
Qualification of.
Election of.
Vacancies in.
To Elect a President.
Powers of.
Special Meetings.
Proof of By-Laws.
Transfer of Stock.
Allotment of Stock.
Calls.
Forfeiture of Stock.
Holder in arrears not to vote.
Books to be kept.
Liability of Directors for improper transfer.
Books to be kept open.
Penalty for false entries in.
Penalty for refusing inspection of books.
Company not liable for trusts.
Contracts.
Company not to deal in stock.
Liability of Shareholders.
Liability for Dividends.
Liability for Servants' Wages.
Actions.
Forfeiture of Charter.
Fees.
Acts Repealed.
Short Title.

HER MAJESTY, by and with the advice and consent of the Legislature of Quebec, enacts as follows:—

1. The following expressions in this Act, and in all letters patent and supplementary letters patent issued under the same, have the meanings hereby assigned to them, unless there is something in the subject or context repugnant to such construction, that is to say—

1. The expression "the letters patent" means the letters patent incorporating a Company for any purpose contemplated by this Act;

2. The expression "the supplementary letters patent" means any letters patent granted for increasing or reducing of the capital stock of such Company;

3. The expression "the Company" means the Company so incorporated by letters patent;

4. The expression "the undertaking" means the whole of the works and business of every kind which the Company is authorized to carry on;

5. The expression "real estate" or "land" includes all immoveable property of every kind;

6. The expression "shareholder" or "stockholder" means every subscriber to or holder of stock in the Company, and extends to and includes the personal representatives of the shareholder.

2. The Lieutenant-Governor in Council may, by letters patent under the great seal, grant a charter to any number of persons, not less than five, who shall petition therefor constituting such persons and others who may become shareholders in the Company thereby created, a body corporate and politic for any of the following purposes:—

1. Carrying on any kind of manufacturing, ship building, mechanical printing and publishing, or chemical business;

2. Mining for gold, silver, copper, or other metals, or ores, or for coal, plumbago or other minerals;

3. Washing, dressing, smelting, and otherwise preparing for market the ores of all kinds of metals;

4. Erecting, maintaining, and using dams, sluices and apparatus for excavating and washing auriferous earth in the process of gold mining;

5. Opening and working quarries of marble, slate or other economic minerals, or mineral substances, and the manufacture, exportation and sale thereof;

6. Boring for, opening and using petroleum, salt, or other mineral springs;

7. Erecting and maintaining any building or buildings to be used in whole or part as a Mechanics' Institute, or public reading or lecture room, or gymnasium, or as a public hotel, or as baths or bath, or for skating or curling rinks, or for agricultural or horticultural fairs or exhibitions, or for libraries or for educational, library, scientific or religious purposes, or as houses to be leased.

8. Carrying on any fishery or fisheries in this Province, or in the waters thereto adjacent, or in the Gulf of St. Lawrence, and building and equipping vessels for such fishery or fisheries.

9. Carrying on any forwarding business, and constructing, owning, chartering or leasing ships, steamboats, wharves, roads, or other property required for the purpose of such forwarding business.

10. Acquiring or constructing and maintaining any plank, macadamized, or gravelled road, or any bridge, pier, wharf, or dry dock, or marine railway, or any dam, sluice, raceway, or other hydraulic apparatus for manufacturing use of any kind.

11. Acquiring, holding, and carrying on any model farm or garden, and dealing in improved stock, seed, grain and other articles for agricultural use.

12. Reclaiming and improving tracts of marshy or other waste lands by drainage, or planting of trees, or otherwise.

And such letters patents may be granted to any one Company, for any two or more of the purposes mentioned in the paragraphs numbered two, three, four and five of this section.

3. The applicants for such letters patent must give at least one month's previous notice in the Quebec Official Gazette of their intention to apply for the same, stating therein—

1. The proposed corporate name of the Company, which shall not be that of any other known Company, incorporated or unincorporated, or any name liable to be unfairly confounded therewith, or otherwise on public grounds objectionable;

2. The object for which its incorporation is sought;

3. The place or places within this Province where its operations are to be carried on, with special mention if there be two or more such places of same, one of them as its chief place of business;

4. The amount of its capital stock.

5. The number of shares and amount of each share;

6. The names in full, with the address and calling of each of the applicants, with special mention of the names of not less than three nor more than nine of their number who are to be the first directors of the Company, and the major part of whom must be resident in Canada and subjects of Her Majesty by birth or naturalization.

4. At any time, not more than one month after the last publication of such notice, the applicants may petition the Lieutenant-Governor, through the Secretary of the Province, for the issue of such letters patent;

2. Such petition must recite the facts set forth in the notice, and must further state the amount of stock taken by each applicant, and also the

amount paid in upon the stock of each applicant, and the manner in which the same has been paid in and is held for the Company.

3. The aggregate of the stock so taken must be at least the one-half of the total amount of the stock of the Company.

4. The aggregate so paid in thereon must be at least ten per cent. thereof, or five per cent. of the total capital, unless such total exceed five hundred thousand dollars, in which case the aggregate paid in upon such excess must be at least two per cent. thereof.

5. Such aggregate must have been paid in to the credit of the Company or of trustees therefor, and must be standing at such credit in some chartered bank or banks within the Province, unless the object of the Company is one requiring that it should own real estate, in which case not more than one half thereof may be taken as invested in real estate, suitable to such object duly held by trustees therefor, and being fully of the required value over and above all incumbrances thereon ;

6. The petition may ask for the embodying in the letters patent of any provision which otherwise under this Act might be embodied in any by-law of the Company when incorporated.

5. Before the letters patent are issued the applicants must establish to the satisfaction of the Secretary, or of such other officer as may be charged by order of the Lieutenant-Governor in Council to report thereon the sufficiency of their notice and petition, the truth and sufficiency of the facts therein set forth ; and further, that the applicants, and more especially the provisional directors named are persons of sufficient reputed means to warrant the application.

2. And to that end the Secretary, or such other officer may take and keep of record any requisite evidence in writing under oath or affirmation, and may administer every requisite oath or affirmation.

6. The letters patent shall recite all the material averments of the notice and petition as so established.

7. Notice of the granting of the letters patent shall be forthwith given by the Secretary of the Province in the Quebec Official Gazette in the form of the Schedule A appended to this Act, and thereupon from the date of the letters patent the persons therein named and their successors shall be a body corporate and politic by the name mentioned therein.

8 Every Company so incorporated may acquire, hold, alienate, and ... y any real estate requisite for the carrying on of the undertaking of such Company, and shall forthwith become and be invested with all rights, real and personal theretofore held by or for it under any trust created with a view to its incorporation, and with all the powers, privileges, and im-

munities requisite to the carrying on of its undertaking as though incorporated by a Special Act of Parliament, making it by that name a body corporate and politic, and embodying all the provisions of this Act and of the letters patent.

9. The directors of the Company, if they see fit at any time after the whole capital stock of the Company shall have been allotted and paid in, but not sooner, may make a by-law for increasing the capital stock of the Company to any amount which they may consider requisite in order to the due carrying out of the objects of the Company.

2. Such by-law shall declare the number and value of the shares of the new stock, and may prescribe the manner in which the same shall be allotted; and in default of its so doing, the control of such allotment shall be held to rest absolutely in the directors.

10. The directors of the Company, if they see fit at any time, may make a by-law for decreasing the capital stock of the Company to any amount which they may consider sufficient in order to the due carrying out of the undertaking of the Company, and advisable;

2. Such by-law shall declare the number and value of the shares of the stock as so decreased; and the allotment thereof, or the rule or rules by which the same shall be made.

11. But no by-law for increasing or decreasing the capital stock of the Company shall have any force or effect whatever until after it shall have been sanctioned by a vote of not less than two-thirds in amount of the shareholders at a general meeting of the Company duly called for considering the same, and afterwards confirmed by supplementary letters patent.

12. At any time, not more than six months after such sanction of such by-law, the directors may petition the Lieut.-Governor, through the Secretary of the Province, for the issue of supplementary letters patent to confirm the same.

2. With such petition they must produce such by-law, and establish to the satisfaction of the Secretary, or of such other officer as may be charged by order of the Lieut.-Governor in Council to report thereon, the due passage and sanction of such by-law, and the *bona fide* character of the increase or decrease of capital thereby provided for; and to that end the Secretary or such officer may take and keep of record any requisite evidence in writing, under oath or affirmation, and may administer every requisite oath or affirmation.

13. Upon due proof so made, the Lieut.-Governor in Council may grant such supplementary letters patent, under the great seal; and notice thereof shall be forthwith given by the Secretary of the Province in the Quebec Official Gazette, in the form of the schedule B appended to this Act, and thereupon, from the date of the supplementary letters patent, the capital

stock of the Company shall be and remain increased or decreased, as the case may be, to the amount in the manner and subject to the conditions set forth by such by-law; and the whole of the stock, as so increased or decreased, shall become subject to the provisions of this Act, in like manner (so far as may be) as though every part thereof had formed part of the stock of the Company originally subscribed.

14. All powers given to the Company by the letters patent and supplementary letters patent granted in its behalf, shall be exercised subject to the provisions and restrictions contained in this Act.

15. The affairs of the Company shall be managed by a board of no less than three, nor more than nine directors.

16. The persons named as such in the letters patent shall be the directors of the Company, until replaced by others duly named in their stead.

17. No person shall be elected or named as a director thereafter unless he is a shareholder, owning stock absolutely in his own right, and not in arrear in respect of any call thereon; and the major part of the after directors of the Company shall further at all times, be persons resident in Canada, and subjects of Her Majesty by birth or naturalization.

18. The after directors of the Company shall be elected by the share holders in general meeting of the Company, assembled at such times in such wise, and for such term not exceeding two years, as the letters patent (or in default thereof) the by-laws of the Company may prescribe.

19. In default only of other express provisions in such behalf by the letters patent or by-laws of the Company,

1. Such election shall take place yearly, all the members of the board retiring and, (if otherwise qualified) being eligible for re-election;

2. Notice of the time and place for holding general meetings of the Company shall be given at least ten days previously thereto in some newspaper published at or as near as may be to the office or chief place of business of the Company;

3. At all general meetings of the Company every shareholder shall be entitled to as many votes as he owns shares in the Company, and may vote by proxy;

4. Elections of directors shall be by ballot;

5. Vacancies occurring in the Board of Directors may be filled for the unexpired remainder of the term by the board from among the qualified shareholders of the Company;

6. The directors shall from time to time elect from among themselves a President; and shall also name and may remove at pleasure all other officers thereof.

20. If at any time an election of directors do not take effect at the proper time, the Company shall not be held to be thereby dissolved; but such election may take place at any general meeting of the Company duly called for that purpose, and the retiring directors shall continue in office until their successors are elected.

21. The directors of the Company shall have full power in all things to administer the affairs of the Company, and may make, or cause to be made, for the Company any description of contract which the Company may by law enter into, and may, from time to time, make by-laws, not contrary to law nor to the letters patent of the Company, to regulate the stock, the making of calls thereon, the payment thereof, the issue and registration of certificates of stock, the forfeiture of stock for non-payment, the disposal of forfeited stock and of the proceeds thereof, the transfer, the declaration and payment of dividends, the number of the directors, their term of service, the amount of their stock qualification, the appointment, functions duties, and removal of all agents, officers and servants of the Company, the security to be given by them to the Company, their remuneration, and that (if any) of the directors, the time at which, and the place within this Province, where the annual meetings of the Company shall be held, the place or places where its business shall be conducted, the calling of meetings, regular and special, of the board of directors and of the Company, the quorum, the requirements as to proxies, and the procedure in all things at such meetings, the imposition and recovery of all penalties and forfeitures admitting of regulation by by-law, and the conduct in all other particulars of the affairs of the Company; and may, from time to time, amend, repeal, or re-enact the same; but every such by-law, and every repeal, amendment, or re-enactment thereof, unless in the meantime confirmed at a general meeting of the Company, duly called for that purpose, shall only have force until the next annual meeting of the Company, and in default of confirmation thereat, shall, from that time only, cease to have force.

22. One fourth part in value of the shareholders of the Company shall at all times have the right to call a special meeting thereof for the transaction of any business specified in such written requisition and notice as they may issue to that effect.

23. A copy of any by-law of the Company, under their seal, and purporting to be signed by any officer of the Company, shall be received as *prima facie* evidence of such by-law in all courts of law in this Province.

24. The stock of the Company shall be deemed personal estate, and shall be transferable in such manner only, and subject to all such conditions and restrictions as by this Act, or by the letters patent, or the by-laws of the Company shall be prescribed.

25. If the letters patent make no other definite provision, the stock of the Company, so far as the same is not allotted thereby, shall be allotted when and as the directors by by-law or otherwise may ordain.

26. The Directors of the Company may call in and demand from the shareholders thereof, respectively, all sums of money by them subscribed at such times and places, and in such payments or instalments as the letters patent or this Act, or the by-laws of the Company may require or allow, and interest shall accrue and fall due at the rate of six per cent. per annum upon the amount of any unpaid call from the day appointed for the payment of such call.

27. Not less than ten per cent. upon the allotted stock of the Company shall by means of one or more calls be called in and made payable within one year from the incorporation of the Company, and for every year thereafter at least another five per cent. shall in like manner be called in and made payable until the half shall have been called in.

28. The Company may enforce payment of all calls and interest thereon by action in any competent Court, and in such action it shall not be necessary to set forth the special matter, but it shall be sufficient to declare that the defendant is a holder of one share or more, stating the number of shares, and is indebted in the sum of money to which the calls in arrear amount in respect of one call or more, on one share or more, stating the number of calls and the amount of each, whereby an action has accrued to the Company, and a certificate under their seal, and purporting to be signed by any officer of the Company to the effect that the defendant is a shareholder, that such call or calls has or have been made, and that so much is due by him and unpaid thereon, shall be received in all Courts of law as *prima facie* evidence to that effect.

29. If after such demand or notice as by the letters patent or by-laws of the Company may be prescribed any call made upon any share or shares be not paid within such time as by the letters patent or by-laws may be limited in that behalf, the directors in their discretion by vote to that effect reciting the facts and duly recorded in their minutes may summarily declare forfeited any shares whereon such payment is not made; and the same shall thereupon become the property of the Company, and may be disposed of as by by-law or otherwise they shall ordain.

30. No share shall be transferable until the previous calls thereon have been fully paid in, or until declared forfeited for non-payment of calls thereon, or sold under execution.

31. No shareholder, being in arrear in respect of any call, shall be entitled to vote at any meeting of the Company.

32. The Company shall cause a book or books to be kept by the secretary or by some other officer specially charged with that duty, wherein shall be kept correctly recorded—

1. A copy of the letters patent incorporating the Company, and of any supplementary letters patent for increasing the capital stock thereof, and of all by-laws thereof;

2. The names alphabetically arranged of all persons who are or have been shareholders.

3. The address and calling of every such person while such shareholder;

4. The number of shares of stock held by each shareholder;

5. The amounts paid in and remaining unpaid respectively on the stock of each shareholder.

6. All transfers of stock, in their order, as presented to the Company for entry, with the date and other particulars of each transfer, and the date of entry thereof; and,

7. The names, addresses, and calling of all persons who are or have been directors of the Company, with the several dates at which each became or ceased to be such director.

33. The directors may refuse to allow the entry into any such book of any transfer not made by sale under execution of stock, whereof the whole amount has not been paid in; whenever entry is made in such book of any such transfer of stock not fully paid in to a person not being of apparently sufficient means, the directors, jointly and severally, shall be liable to the creditors of the Company in the same manner and to the same extent as the transferring shareholders, but for such entry, would have been; but if any director present when such entry is allowed, do forthwith, or if any director then absent do, within twenty-four hours after he shall have become aware thereof and able to do so, enter on the minute book of the board of directors his protest against the same, and do within eight days thereafter publish such protest, in at least one newspaper, published at or as near as may be possible to the office or chief place of business of the Company, such director may thereby, and not otherwise, exonerate himself from such liability.

34. No transfer of stock, unless made by sale under execution, shall be valid for any purpose whatever, save only as exhibiting the rights of the parties thereto towards each other, and as rendering the transferee liable *ad interim* jointly and severally with the transferor to the Company and their creditors,—until the entry thereof has been duly made in such book or books.

35. Such books shall, during reasonable business hours of every day, except Sundays and holidays, be kept open for the inspection of shareholders and creditors of the Company, and their personal representatives at the office or chief place of business of the Company; and every such shareholder, creditor or representative may make extracts therefrom.

36. Such books shall be *prima facie* evidence of all facts purporting to

be thereby stated, in any suit or proceeding against the Company or against any shareholder.[1]

37. Every director, officer, or servant of the Company who knowingly makes or assists to make any untrue entry in any such book, or who refuses or neglects to make any proper entry therein, or to exhibit the same, or to allow the same to be inspected and extracts to be taken therefrom, shall be liable to a penalty of one hundred dollars for every such untrue entry, and for every such refusal or neglect, and also in damages for all loss or injury which any party interested may have sustained thereby.

38. Every Company neglecting to keep such book or books open for inspection, as aforesaid, shall forfeit its corporate rights.

39. The Company shall not be bound to see to the execution of any trust, whether express, implied, or constructive, in respect of any share; and the receipt of the shareholder in whose name the same may stand in the books of the Company, shall be a valid and binding discharge to the Company for any dividend or money payable in respect of such shares, and whether or not notice of such trust shall not have been given to the Company, and the Company shall not be bound to see to the application of the money paid upon such receipt.

[1] To what is said at p. 232 concerning the power of the Court to compel the production of the books and papers of the Company or corporation, may be added the decision of the Court of Appeal, Montreal in the case of *Crump v. The Mayor et al. of Montreal* (21 L. C. Jur., 249) which rejected a motion for leave to appeal from a judgment refusing a rule to compel the City Clerk to bring up some of the papers in his charge under a subpœna *duces tecum*. Sanborn, J., in delivering the judgment of the Court, said: "Under the City Charter, 14 & 15 V., c. 128, s. 50, it is provided that copies of any documents of the records or archives of the city may be authenticated by the signature of the proper officers and become *prima facie* evidence in all Courts of Justice. By the same section it is provided that any elector may have access to all the records on payment of one shilling. This presumes them at all times at the office ready for inspection there. In this case the plaintiff directs his inquiry to no particular thing. He cannot be permitted the production of all the documents of record or all of a class of documents to see what he can find. He cannot by this means fish for evidence. He must avail himself of the power given by the law to inspect the records at the office and to demand such of them as he requires and it seems contemplated as a rule that he should provide himself with copies. Doubtless there may be cases when for certain specific purposes, documents may be ordered to be produced to verify peculiarities about them not disclosed by a mere copy, or to prove their falsity or the order and relation which they bear to the proceedings, but it is not by an order of a general character to produce a large portion of the city archives with a hope of finding something, but with no definite object in view. On another ground the judgment would necessarily be confirmed if appealed. The Clerk has no power over these records and documents, except as the servant of the Council, to keep them in the office of the Council. Any order that could be given must be given against the Council or the Corporation. Cases similar on this point have been frequently decided in the N. Y. Courts. *Bank of Utica v. Hilliard*, 5 Cow., 153; *Lafarge v. Lafarge M. Co.*, 14 Harwood, 126; *Opdyke v. Marble*, 44 Barbour, 64.

40. Every contract, agreement, engagement, or bargain made, and every bill of exchange drawn, accepted, or endorsed, and every promissory note and cheque made, drawn, or endorsed on behalf of the Company by any agent, officer, or servant of the Company, in general accordance with his powers as such, under the by-laws of the Company, shall be binding upon the Company, and in no case shall it be necessary to have the seal of the Company affixed to any such contract, agreement, engagement, bargain, bill of exchange, promissory note, or cheque, or to prove that the same was made, drawn, accepted, or endorsed, as the case may be, in pursuance of any by-law or special vote, or order, nor shall the party so acting as agent, officer, or servant of the Company, be thereby subjected individually to any liability whatever to any third party therefor, provided always that nothing in this section shall be construed to authorize the Company to issue any note intended to be circulated as money or as the note of a bank.

41. No Company shall use any of its funds in the purchase of stock in any other corporation.

42. Each shareholder, until the whole amount of his stock has been paid up shall be individually liable to the creditors of the Company to an amount equal to that not paid up thereon; but shall not be liable to an action therefor by any creditor before an execution against the Company has been returned unsatisfied in whole or in part, and the amount due on such execution shall be the amount recoverable with costs against such shareholder.

43. The shareholders of the Company shall not as such be held responsible for any act, default, or liability whatever of the Company, or for any engagement, claim, payment, loss, injury, transaction, matter or thing whatever, relating to or connected with the Company, beyond the amount of their respective shares in the capital stock thereof.

44. No person holding stock in the Company as an executor, administrator, tutor, curator, guardian, or trustee, shall be personally subject to liability as a shareholder, but the estates and funds in the hands of such person shall be liable in like manner and to the same extent as the testator, or intestate, or the minor, ward, or interdicted person, or the person interested in such trust fund would be if living and competent to act, and holding such stock in his own name; and no person holding such stock as collateral security shall be personally subject to such liability, but the person pledging such stock shall be considered as holding the same, and shall be liable as a shareholder accordingly.

45. Every such executor, administrator, tutor, curator, guardian, or trustee shall represent the stock in his hands at all meetings of the Company, and may vote accordingly as a shareholder.

46. If the directors of the Company declare and pay any dividend when the Company is insolvent, or any dividend the payment of which

renders the Company insolvent, or diminishes the capital stock thereof, they shall be jointly and severally liable as well to the Company as to the individual shareholders and creditors thereof, for all the debts of the Company then existing, and for all thereafter contracted during their continuance in office respectively; but if any director present when such dividend is declared do forthwith, or if any director then absent, do within twenty-four hours after he shall have become aware thereof and able so to do, enter on the minutes of the board of directors his protest against the same, and do within eight days thereafter publish such protest in at least one paper published at or as near as may be possible to the office or chief place of business of the Company, such director may thereby, and not otherwise, exonerate himself from such liability.

47. No loan shall be made by the Company to any shareholder, and if such be made, all directors and other officers of the Company making the same, or in anywise assenting thereto, shall be jointly and severally liable to the Company for the amount of such loan, with legal interest—for all debts of the Company contracted from the time of making such loan to that of the repayment thereof.

48. The directors of the Company shall be jointly and severally liable to the labourers, servants and apprentices thereof for all debts not exceeding one year's wages due for services performed for the Company whilst they are such directors respectively; but no director shall be liable to an action therefor, unless the Company has been sued therefor within one year after the debt became due, nor yet unless such director is sued therefor within one year from the time when he ceased to be such director, nor before an execution against the Company has been returned unsatisfied, in whole or in part; and the amount due on such execution shall be the amount recoverable with costs against the directors.

49. Any description of action may be prosecuted and maintained between the Company and any shareholder thereof, and no shareholder, not being himself a party to such suit, shall be incompetent as a witness therein.

50. Service of all manner of summons or writ whatever upon the Company may be made by leaving a copy thereof at the office or chief place of business of the Company with any grown person in charge thereof, or elsewhere with the president or secretary thereof; or if the Company have no known office or chief place of business, and have no known president or secretary, then upon return to that effect duly made, the Court may order such publication as it may deem requisite to be made in the premises, for at least one month, in at least one newspaper; and such publication shall be held to be due service upon the Company.

51. In any action or other legal proceeding, it shall not be requisite to set forth the mode of incorporation of the Company, otherwise than by mention of it under its corporate name, as incorporated by virtue of letters

patent—or of letters patent and supplementary letters patent, as the case may be,—under this Act; and the notice in the *Quebec Official Gazette*, of the issue thereof shall be *prima facie* proof of all things thereby declared; and on production of the letters patent or supplementary letters patent themselves, or of any exemplification or copy thereof under the great seal, the fact of such notice shall be presumed; and save only in any proceeding by *scire facias* or otherwise for direct impeachment thereof, the letters patent or supplementary letters patent themselves, or any exemplification or copy thereof under the great seal, shall be conclusive proof of every matter and thing therein set forth.

52. The charter of the Company shall be forfeited by non-user during three consecutive years at any one time,—or if the Company do not go into actual operation within three years after it is granted; and no declaration of such forfeiture by any Act of Parliament shall be deemed an infringement of such charter.

53. The Company shall be subject to such further and other provisions as the Legislature may hereafter deem expedient.

54. The Governor in Council may, from time to time, establish, alter and regulate the tariff of the fees to be paid on application for letters patent and supplementary letters patent under this Act, may designate the department or departments through which the issue thereof shall take place, and may prescribe the forms of proceeding and record in respect thereof, and all other matters requisite for carrying out the object of this Act:

2. Such fees may be made to vary in amount, under any rule or rules, —as to nature of Company, amount of capital, and otherwise,—that may be deemed expedient;

3. No step shall be taken in any department towards the issue of any letters patent or supplementary letters patent under this Act until after the amount of all fees therefor shall have been duly paid.

55. After the present session of this Legislature no bill for incoporating a Company for any of the purposes set forth in the first section of this Act or for increasing or decreasing the capital stock of any such Company, shall be introduced or proceeded with either in the Legislative Council or in the Legislative Assembly until there has been paid in to the credit of the Treasurer, for the public use of the Province—over and above whatever may be required to be paid by way of fee or for printing or otherwise under the rules of the Legislative Council or Legislative Assembly—a sum equal to what would have to be paid under the order or orders in Council in force upon letters patent or supplementary letters patent (as the case may be) if the privileges sought by means of such bill were sought by means of letters patent or supplementary letters patent under this Act.

2. Should such bill fail to become law so much only of such amount not exceeding one third thereof as may be remitted by joint resolution of the

Legislative Council and Legislative Assembly may be repaid to the depositor;

3. Should such bill be so amended as to make the amount payable therefor as amended other than what was so payable therefor as introduced, any excess of payment shall be repaid or any required further payment made good as the case may be.

4. And no such bill shall be presentable for sanction to the Lieutenant Governor unless there is endorsed thereon a certificate by the Clerks of the Legislative Council and Assembly, respectively, that they are officially assured of the fact, that all payment hereby exigible has been duly made upon the bill.

56. The Act, chapter sixty-three of the Consolidated Statutes of Canada, intituled "An Act respecting Joint Stock Companies for manufacturing, mining, mechanical, chemical, or other purposes, or for the erection of public hotels, or baths, and bath houses, or for the opening and using of salt, or mineral springs, or for carrying on fishing,"—the Act, chapter thirty-one of the Statutes of Canada, passed in the twenty-third year of Her Majesty's reign, and intituled "An Act respecting the judicial incorporation of Joint Stock Companies for certain purposes,"—and the Act, chapter twenty-three of the Statutes of Canada, passed in the Session of the Parliament of Canada, held in the twenty-seventh and twenty-eighth years of Her Majesty's reign, and intituled "An Act to authorize the granting of charters of incorporation to manufacturing, mining, and other Companies," and all Acts extending or amending the same or any of them—are hereby repealed so far as regards the formation or incorporation hereafter, in virtue of any of the provisions thereof of any Company whatever, the incorporation of which is subject to the control of this legislature.

2. But every such Company heretofore incorporated in virtue of any of such provisions shall so remain, and no provision of such Acts, as touching any such Company, be in any wise affected by this Act;

3. And every application for incorporation of any Company, the incorporation of which is subject to the control of this Legislature, now pending under the said Statute, passed in the twenty-third year of Her Majesty's reign, or under the said Act, chapter twenty-three, of the said Statutes, passed in the Session held in the twenty-seventh and twenty-eighth years of Her Majesty's reign,—may be proceeded with, and incorporation, by judicial decree or letters patent (as the case may be) may be obtained in virtue thereof, as though this Act had not been passed.

4. And no letters patent granted, or which may be granted, by the Lieutenant-Governor in Council upon any such application, under the said Act, chapter twenty-three, of the said Session, held in the twenty-seventh and twenty-eighth years of Her Majesty's reign, which was pending, or for which notice had been given, or was in process of being given, on the first

day of July last, shall be deemed irregular by reason of any participation whatever of any department or officer of the Dominion in the proceedings had upon such application or in any thereof.

57. This Act may be cited as "the Joint Stock Companies Incorporation Act."

SCHEDULE A.

Public notice is hereby given that under the Joint Stock Companies' Incorporation Act, letters patent have been issued under the great seal of the Province of Quebec, bearing date the day of incorporating (*here state names, address and calling of each corporator named in the letters patent*) for the purpose of (*here state undertaking of the Company as set forth in the letters patent*) by the name of (*here state the name of the Company as in the letters patent*) with a total capital stock of dollars, divided into shares of dollars each.

Dated at the office of the Secretary of the Province of Quebec this day of

SCHEDULE B.

Public notice is hereby given that under the Joint Stock Companies' Incorporation Act, supplementary letters patent have been this day issued under the great seal of the Province of Quebec, bearing date the day of whereby the total capital stock of (*here state the name of the Company*) is increased (*or decreased, as the case may be*) from dollars to dollars. Dated, etc.

CHAPTER 41.

AN ACT TO AMEND THE JOINT STOCK COMPANIES' INCORPORATION ACT.

(32 VIC., CAP. 41.)

[*Assented to 5th April* 1869.

HER MAJESTY by and with the advice and consent of the Legislature of Quebec enacts as follows:—

1. The eighth sub-section of the second section of the Joint Stock Companies' Incorporation Act is hereby amended so as to read in the following words:

"Carrying on any fishery or fisheries and building and equipping vessels for such fishery or fisheries."

2. This Act shall be held to all intents as forming part of the said Act, and the expression "The Joint Stock Companies' Incorporation Act" shall be a sufficient citation as well of this Act as of the Act hereby amended.

CHAPTER 25.

AN ACT RESPECTING CERTAIN JOINT STOCK COMPANIES.

(36 VIC., CAP. 25.)

[*Assented to December 24, 1872.*

HER MAJESTY, by and with the advice and consent of the Legislature of Quebec, enacts as follows:—

1. It shall be lawful for the directors of any corporation, the amount of each share in the capital stock of which shall be a multiple of one hundred, to pass a by-law, declaring that the capital stock of such corporation shall be divided into shares of one hundred dollars each, and from and after the passing of such by-law, such capital stock shall be divided into shares of one hundred dollars each.

2. Any corporation incorporated and existing in Great Britain, or in the United States of America, shall hereafter have the right to acquire and hold any lands and real estate in this Province for their occupation, or the prosecution of their business only, any law to the contrary, notwithstanding; providing, that no such corporation formed for the purpose of promoting art, science, religion, charity, or any other like object not involving the acquisition of gain by the corporation or by the individual members thereof, shall without the sanction of the Lieutenant-Governor in Council, hold more than ten acres of land; but the Lieutenant-Governor in Council may by license under the hand of the Provincial Secretary empower any such corporation to hold lands in such quantity and subject to such conditions as he shall think fit.

3. Nothing in this Act contained shall affect any case pending when it shall come into force, but such case shall be decided as if this Act had not been passed.

CHAPTER 31.

AN ACT RESPECTING THE VOLUNTARY WINDING UP OF JOINT STOCK COMPANIES.

(42-43 VIC., CAP. 31.)

[*Assented to October 31st, 1879.*

Companies may be wound up, s. 1.
General meeting respecting, s.
Vote of two-thirds necessary, s.
Corporate powers continued, s. 4.
Appointment of liquidators, s. 5.
Removal of liquidators, s. 6.
Appointment by the Court, s. 7.
Resolution to be registered, s. 8.
Duties, etc., of liquidators, s. 9.
Payment of debts of company, s. 11.
Collection of claims, s. 12.
Remuneration of liquidators, s. 13.
Liquidators to report every year, s. 14.
Statement after winding up, s. 15.
Notice to Provincial Secretary, s. 16.
Notice by Provincial Secretary, s. 17.
Dividends, etc., unclaimed, s. 18.
Deposit of books, etc., s. 19.
Penalty for neglect, s. 20.
Accounts to be rendered, s. 21.
Articles of code affected, s. 22.
Promulgation of Act, s. 23.

HER MAJESTY, by and with the advice and consent of the Legislature of Quebec, enacts as follows:—

1. Any Joint Stock Company incorporated by letters patent issued under "the Joint Stock Companies' Incorporation Act (31 Vic., cap. 25) or to which "the Joint Stock Companies' General Clauses Act" (31 Vic., cap. 24.) applies, may be wound up voluntarily whenever the directors may deem it expedient that the Company shall be dissolved.

2. The directors shall thereupon convene a general meeting of the shareholders, mentioning in the notice that the dissolution of the Company will be proposed at such meeting.

3. The resolution of the directors declaring it to be expedient that the Company should be wound up voluntarily shall be submitted to the general meeting of the shareholders and if such meeting pass by a majority representing not less than two thirds of the stock, a resolution that the Company shall be wound up voluntarily and dissolved, then the Company shall forthwith subsist and carry on business for the purpose only of winding up its affairs.

4. The corporate state and corporate powers of the Company shall continue until its affairs are wound up.

5. At the general meeting a liquidator or liquidators shall be appointed for the purpose of winding up the affairs of the Company and of distributing its assets and thereupon the Board of Directors shall cease to exist.

6. If any vacancy occurs in the office of liquidator by death, resignation or otherwise the Company may in general meeting fill up such vacancy and such general meeting may be convened by the continuing liquidator or liquidators or by any shareholder. The Company may also in general meeting convened by any three shareholders on notice mentioning that the removal of the liquidators or of any liquidator will be proposed, remove such liquidator or liquidators and appoint another or others in his or their place. [1]

7. In default at any time of the shareholders appointing or replacing a liquidator or liquidators, any Judge of the Superior Court in the district where the Company has its chief office or principal place of business, may on application of a shareholder, after a default of fifteen days, appoint a liquidator or liquidators.

The Judge may also on due cause shown remove any liquidator, and he may after a default of fifteen days on the part of the shareholders to do so appoint another.

8. Notice of the resolution passed by the shareholders for the winding up and dissolution of the Company shall be registered forthwith in the office of the Prothonotary of the Superior Court for the district, and in the Registry office for the registration division in which the Company has its chief office or principal place of business, and notice thereof shall also be given to the Provincial Secretary, and be published by him in the *Quebec Official Gazette*.

9. The liquidator, or liquidators, shall take into his or their custody, and under his or their control all the assets of the Company, and shall have power, subject however to such limitation as may be determined by the resolution of the shareholders for the dissolution of the Company, to do the following things:—

1. To bring, or defend, any action or other judicial proceeding in the name and on behalf of the Company; [2]

[1] In order that the Court may remove a liquidator, some unfitness in the liquidator must be shown; but the fact that a claim has been made against him and some directors, to which he offers opposition is sufficient cause for his removal. Sir John Moore Gold Mining Co., *in re* L. R. 12, Ch. D. 325, 28 W. R. 203.

[2] A Receiver cannot maintain a suit to collect debts of the Corporation unless authorized to sue. *Screven v. Clark*, 48 Ga. 41. Su. Ct. 1873. And in a suit by a Receiver against a stockholder to recover unpaid subscriptions the Receiver must show a clear legal right to institute and carry on the same. *Chandler v. Brown*, 77 Ill. 333 Su. Ct. 1875. But illegalities in his appointment are no ground of defence to an action by him on a note of the Corporation *Case v. Marchand*, 23 La Ann. 60. Su. Ct. 1871.

2. To carry on the business of the Company so far as may be necessary for the beneficial winding up of the same, and to collect all moneys due to it;

3. To sell the moveable and immoveable property of the Company by public auction or private contract, and either in block or in parcels, provided that at a general meeting of the shareholders the majority shall have given their consent to a sale in block;

4. To execute in the name and on behalf of the Company all deeds, acquittances, receipts, and other documents;

5. To draw, accept, make, or endorse bills of exchange, or promissory notes in the name and on behalf of the Company, and to raise upon the security of the assets of the Company from time to time any requisite sums of money, and—

6. To do and execute all such other acts and things as may be necessary for winding up the affairs of the Company and distributing its assets, including the power to compromise at discretion all claims and rights appertaining to the Company.

10. When several liquidators are appointed their power may be validly exercised by the majority of them.

11. The liquidator or liquidators shall first pay the debts of the Company and the costs, charges and expenses of winding it up and shall afterwards distribute the balance of the proceeds of the assets among the shareholders according to their rights and interest in the Company.

12. The liquidator or liquidators shall recover and collect unpaid calls in full or proportionably as the case may require, from shareholders in default, should he or they deem it necessary; but in case of the non-collection in whole or in part of such unpaid calls, the shareholders in default shall only rank in the distribution when those who have paid more have been ranked for the excess so paid by them. [1]

13. The shareholders shall determine the remuneration of the liquidator or liquidators and also whether or not he or they shall give security for his or their administration, specifying when security is to be given and the amount thereof.

The latest expression of the law of the State of New York maintains the right of a Receiver to recover the balance unpaid upon subscriptions to the capital stock of such Corporation without any previous call for the payment of such subscription having been made. *Winans v. The McKean R. R. & Navigation Co.*, C. C., U. S., N. Y. 104.

[2] An official liquidator is not entitled to receive anything out of the Company by way of remuneration until all the costs of the winding up, including the bill of costs of the solicitor employed by him have been paid in full. Freehold Land Co. *in re* L. R. 9, Eq. 376. 1870.

14. In the event of the winding up continuing for more than one year, the liquidator or liquidators shall call a general meeting of the shareholders at the end of the first year and at the end of each succeeding year, or as soon thereafter as may be convenient, and he or they shall lay before such meeting an account showing his or their acts and dealings and the manner in which the operations for the winding up have been conducted during the preceding year.

15. As soon as the affairs of the Company are fully wound up the liquidator or liquidators shall make up an account showing the cash on hand at the date on which the Company was placed in liquidation, the property of the Company disposed of, the amounts realized, the sums paid, and generally the manner in which such winding up has been conducted and shall attest the same before a Justice of the Peace; and thereupon he or they shall call a general meeting of the Company for the purpose of laying such account before the shareholders and of having the same confirmed.

16. The liquidator or liquidators shall make a return to the Provincial Secretary of such meeting having been held and also of such meeting having confirmed the account showing the manner in which the winding up has been conducted. The Provincial Secretary shall cause such return to be registered in the registers of the Province, and forthwith on the registration thereof the Company shall be dissolved.

17. The Provincial Secretary shall without delay publish a notice of the dissolution of the Company in the *Quebec Official Gazette*, and the liquidator, or liquidators, shall also forthwith register a notice of the dissolution in the office of the Prothonotary of the Superior Court for the district, and in the Registry Office for the registration division in which the Company had its chief office or principal place of business.

18. Within thirty days after the date of the dissolution of the Company the liquidator, or liquidators, shall deposit with the Treasurer of the Province the amount of all debts, and all dividends which may then be unclaimed and unpaid with a statement thereof attested before a Justice of the Peace, and the money so deposited shall be treated as a deposit under the Act respecting judicial and other deposits, (35 Vic., cap. 5,) and when claimed shall be paid over to the person or persons entitled thereto.

19 Within the same period of thirty days the liquidator or liquidators shall deposit the books, accounts and documents of the Company, and also the sworn account submitted to the shareholders and confirmed by them showing the manner in which the winding up has been conducted, and a duplicate of the sworn statement of the moneys deposited with the Treasurer of the Province in the office of the Prothonotary of the Superior

Court for the district in which the Company had its chief office or principal place of business.

20. If the liquidator or liquidators neglect to deposit the money with the Treasurer of the Province or to deposit the books, accounts and documents as provided in section 18 and 19, he or they severally shall be liable to a penalty not exceeding ten dollars for every day during which he or they are in default.

21. Liquidators shall be bound to render their accounts and to pay over the money for which they are accountable under the same obligation and penalties as a curator to the property of a dissolved corporation under the Civil Code and the Code of Civil Procedure.

22. Articles 368, 372 and 373 of the Civil Code are modified in the particulars contained in this Act.[1]

23. This Act shall have force and effect from the day of its sanction.

[1] *Vide* Preface.

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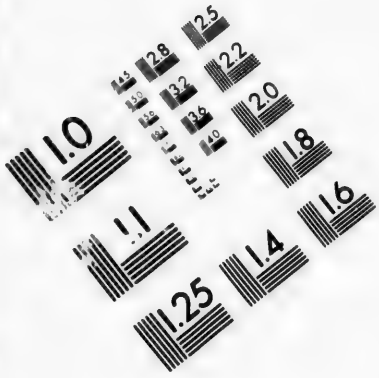

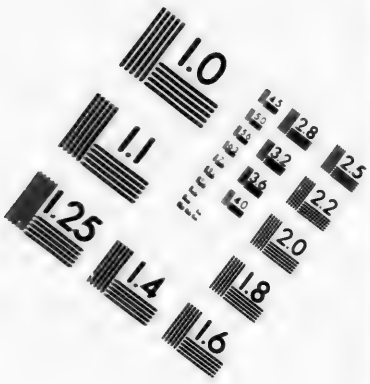

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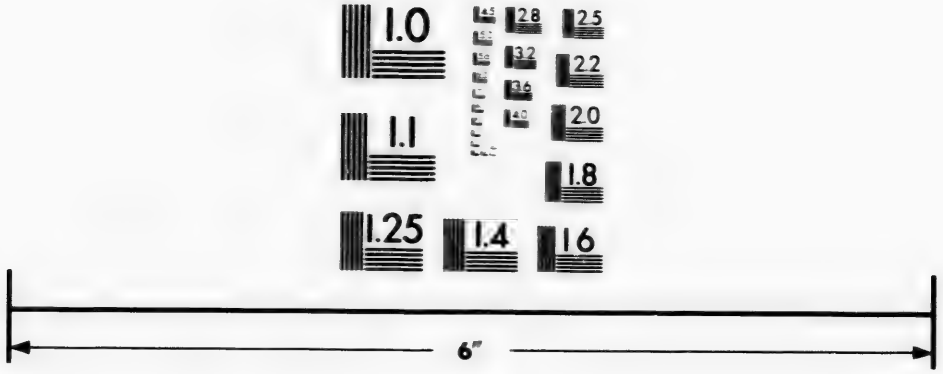

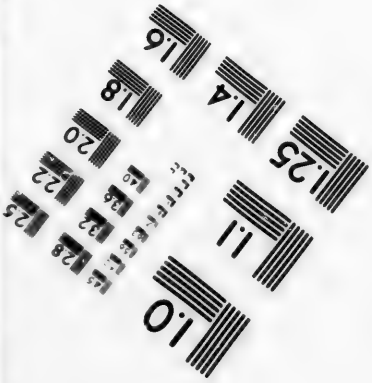

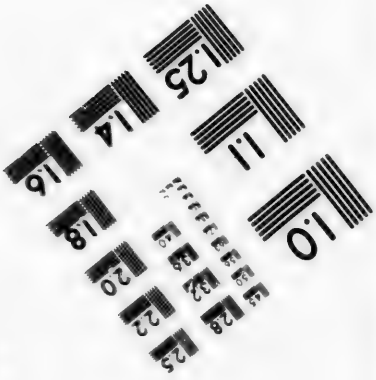

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